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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 331

9 CFR Part 121

[Docket No. 02–082–2]

RIN 0579–AB47

Agricultural Bioterrorism Protection Act of 2002; Listing of Biological Agents and Toxins and Requirements and Procedures for Notification of Possession; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; technical amendment.

SUMMARY: In an interim rule published in the **Federal Register** and effective on August 12, 2002, we established regulations that listed biological agents and toxins determined to have the potential to pose a severe threat to animal or plant health, or to animal or plant products, and that required all persons in possession of any listed biological agent or toxin to notify the Secretary of such possession. The definitions provided in those regulations for the terms 'biological agent'' and ''toxin'' did not reflect the amendments made by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 to the definitions of those terms in section 178 of title 18, United States Code. Therefore, we are amending the regulations so that the definitions will be consistent.

EFFECTIVE DATE: August 12, 2002.

FOR FURTHER INFORMATION CONTACT: For information concerning the regulations in 7 CFR part 331, contact Dr. Arnold T. Tschanz, Senior Staff Officer, Regulatory Coordination, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737–1236, (301) 734–8790.

For information concerning the regulations in 9 CFR part 121, contact Dr. Denise Spencer, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective on August 12, 2002 (67 FR 52383–52389, Docket No. 02–082–1), we established regulations in 7 CFR part 331 and 9 CFR part 121 that listed biological agents and toxins determined to have the potential to pose a severe threat to animal or plant health, or to animal or plant products, and that required all persons in possession of any listed biological agent or toxin to notify the Secretary of such possession. The interim rule was published in accordance with the requirements of section 212 of subtitle B (Department of Agriculture), title II (Enhancing Controls on Dangerous Biological Agents and Toxins), of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).

In subtitle B, section 212(l) provides that ''[t]he terms 'biological agent' and 'toxin' have the meanings given such terms in section 178 of title 18, United States Code.'' Thus, we referred to 18 U.S.C. 178 when preparing the definitions for those terms we included in the ''Definitions'' sections of both 7 CFR part 331 and 9 CFR part 121 (§§ 331.1 and 121.1, respectively).

We failed to note, however, that elsewhere in title II of Public Law 107–188 (section 231 of subtitle D, ''Criminal Penalties Regarding Certain Biological Agents and Toxins,'' specifically), the definitions of ''biological agent'' and ''toxin'' in 18 U.S.C. 178 had been amended. Therefore, in this document, we are amending 7 CFR 331.1 and 9 CFR 121.1 as established by our August 12, 2002, interim rule so that the definitions provided in those sections for the terms ''biological agent'' and ''toxin'' are consistent with the definitions for those terms in 18 U.S.C. 178, as amended by Public Law 107–188.

List of Subjects

7 CFR Part 331

Agricultural research, Laboratories, Plant diseases and pests, Reporting and recordkeeping requirements.

9 CFR Part 121

Agricultural research, Animal diseases, Laboratories, Medical research, Reporting and recordkeeping requirements.

Accordingly, we are amending 7 CFR part 331 and 9 CFR part 121 as follows:

PART 331—POSSESSION OF BIOLOGICAL AGENTS AND TOXINS

1. The authority citation for part 331 continues to read as follows:

Authority: Secs. 211–213, Title II, Pub. L. 107–188, 116 Stat. 647 (7 U.S.C. 8401).

2. In § 331.1, the definitions for *biological agent* and *toxin* are revised to read as follows:

§ 331.1 Definitions.

Biological agent. Any microorganism (including, but not limited to, bacteria, viruses, fungi, rickettsiae, or protozoa), or infectious substance, or any naturally occurring, bioengineered, or synthesized component of any such microorganism or infectious substance, capable of causing:

(1) Death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(2) Deterioration of food, water, equipment, supplies, or material of any kind; or

(3) Deleterious alteration of the environment.

* * * * *

Toxin. The toxic material or product of plants, animals, microorganisms (including, but not limited to, bacteria, viruses, fungi, rickettsiae, or protozoa), or infectious substances, or a recombinant or synthesized molecule, whatever their origin and method of production, and includes:

(1) Any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

(2) Any poisonous isomer or biological product, homolog, or derivative of such a substance.

PART 121—POSSESSION OF BIOLOGICAL AGENTS AND TOXINS

3. The authority citation for part 121 continues to read as follows:

Authority: Secs. 211–213, Title II, Pub. L. 107–188, 116 Stat. 647 (7 U.S.C. 8401).

4. In § 121.1, the definitions for *biological agent* and *toxin* are revised to read as follows:

§ 121.1 Definitions.

Biological agent. Any microorganism (including, but not limited to, bacteria, viruses, fungi, rickettsiae, or protozoa), or infectious substance, or any naturally occurring, bioengineered, or synthesized component of any such microorganism or infectious substance, capable of causing:

(1) Death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(2) Deterioration of food, water, equipment, supplies, or material of any kind; or

(3) Deleterious alteration of the environment.

* * * * *

Toxin. The toxic material or product of plants, animals, microorganisms (including, but not limited to, bacteria, viruses, fungi, rickettsiae, or protozoa), or infectious substances, or a recombinant or synthesized molecule, whatever their origin and method of production, and includes:

(1) Any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

(2) Any poisonous isomer or biological product, homolog, or derivative of such a substance.

Done in Washington, DC, this 20th day of September, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–24423 Filed 9–25–02; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG61

Industry Codes and Standards; Amended Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to incorporate by reference a later edition and addenda of the American Society of Mechanical Engineers (ASME) *Boiler and Pressure Vessel Code* (BPV Code) and the ASME *Code for Operation and Maintenance of Nuclear Power Plants* (OM Code) to provide updated rules for construction, inservice inspection (ISI), and inservice testing (IST) of components in light-water cooled nuclear power plants. This final rule incorporates by reference the latest edition and addenda of the ASME BPV and OM Codes that have been approved for use by the NRC subject to certain limitations and modifications.

EFFECTIVE DATE: October 28, 2002. The incorporation by reference of certain publications in this rule is approved by the Director of the Office of the Federal Register as of October 28, 2002

ADDRESSES: The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC at 1–800–397–4209, (301) 415–4737, or by email to pdr@nrc.gov. The availability of the Regulatory Analysis, Environmental Assessment, and Resolution of Public Comments associated with this rulemaking is further discussed in Section 5 below, under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Stephen Tingen, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Alternatively, you may contact Mr. Tingen at (301) 415–1280, or via e-mail at: *sgt@nrc.gov.*

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1. Background

On August 3, 2001 (66 FR 40626), the NRC published a **Federal Register** notice that presented a proposed rule to amend 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities.'' The proposed rule would revise the requirements for construction, ISI, and IST of nuclear power plant components. For construction, the proposed rule would permit the use of Section III, Division 1, of the ASME BPV Code, 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda for Class 1, Class 2, and Class 3 components with no new modifications or limitations.

For ISI, the proposed rule would permit the use of Section XI, Division 1, of the ASME BPV Code, 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda for Class 1, Class 2, Class 3, Class MC, and Class CC components with new modifications and limitations.

For IST, the proposed rule would permit the use of the ASME OM Code, 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda for Class 1, Class 2, and Class 3 pumps and valves with one new modification.

In the same **Federal Register** notice, the Commission withdrew a proposed rule (64 FR 22580; April 27, 1999) that would have eliminated the requirement for licensees to update their ISI and IST programs every 120 months beyond a

baseline edition and addenda of the ASME Code. That withdrawal was a final action—not part of the proposed rule.

2.0 Public Comments on Proposed Rule; and Final Rule

Interested parties submitted written comments on the proposed rule published on August 3, 2001 (66 FR 40626). Comments were received from 17 separate sources. These sources consisted of 10 utilities, 4 service organizations, and 3 individuals. In response to the public comments, the NRC has either removed or revised some modifications and limitations that were proposed. A summary of the public comments applicable to the proposed rule and their resolution are provided in the following sections. Public comments on the proposed rule that are not addressed in the final rule are addressed in the Resolution of Public Comments. The availability of the Resolution of Public Comments is further discussed in Section 5 below.

The NRC has considered and resolved the public comments and has revised the final rule accordingly. The NRC is publishing these final regulations in § 50.55a to incorporate by reference the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Division 1 rules of Section III of the ASME BPV Code; the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Division 1 rules of Section XI of the ASME BPV Code; and the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of the ASME OM Code for construction, ISI, and IST of components in nuclear power plants. Section III of the ASME BPV Code is acceptable for use with no new limitations or modifications. Section XI of the ASME BPV Code is acceptable for use subject to limitations and modifications. The ASME OM Code is acceptable for use subject to one modification.

This final rule also revises the regulations in § 50.55a that licensees use to modify the implementation of Appendix VIII, ''Performance Demonstration for Ultrasonic Examinations Systems,'' to Section XI of the ASME BPV Code. The amendment clarifies existing ultrasonic (UT) examination qualification requirements in § 50.55a. The amendment also adds new requirements to clarify the coordination of Appendix VIII with other parts of Section XI.

2.1 Section III

There were no public comments on the proposed rule concerning Section III. This final rule revises § 50.55a(b)(1) to incorporate by reference the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Section III of the ASME BPV Code; clarify that the 1963 Edition was the initial edition of Section III incorporated by reference in the regulations; and extend the applicability of the existing regulations in §§ 50.55a(b)(1)(ii), 50.55a(b)(1)(iii), and 50.55a(b)(1)(v) to the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Section III of the ASME BPV Code.

2.2 Section XI

Public comments on the proposed rule concerning Section XI are addressed in the following sections. This final rule revises § 50.55a(b)(2) to incorporate by reference the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Section XI of the ASME BPV Code; clarify that the 1970 Edition was the initial edition of Section XI incorporated by reference in the regulations; and extend the applicability of the existing regulations in §§ 50.55a(b)(2)(viii), 50.55a(b)(2)(ix), 50.55a(b)(2)(xi), 50.55a(b)(2)(xv), and 50.55a(b)(2)(xvii) to the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Section XI of the ASME BPV Code. This final rule also deletes the existing regulations in § 50.55a(g)(6)(ii)(B)(*1*) through (*4*) because the implementation dates have expired and all licensees have completed the requirements or have been approved by an exemption for a delay. The existing requirement that was formerly § 50.55a(g)(6)(ii)(B)(*5*) is redesignated as § 50.55a(g)(6)(ii)(B).

Although § 50.55a(b)(2)(vi) is not addressed in the proposed rule, one commenter stated that § 50.55a(b)(2)(vi) should be revised to include references to the 1998 Edition through the 2000 Addenda of the ASME Code for the ISI of Class MC and Class CC components. The commenter noted that §§ 50.55a(b)(2)(viii) and (ix) in the proposed rule reference the 1998 Edition through the 2000 Addenda, therefore, § 50.55a(b)(2)(vi) should also reference the 1998 Edition through the 2000 Addenda.

The NRC agrees that § 50.55a(b)(2)(vi) should be revised to clarify the applicability of the 1998 Edition through the 2000 Addenda to containment ISI programs but does not agree with the revision suggested by the commenter. The statement of considerations for the final rule published on September 22, 1999 (64 FR 51370), states that either the 1992 Edition with the 1992 Addenda, or the 1995 Edition with the 1996 Addenda of IWE and IWL must be used to develop and implement a containment ISI program within 5 years. The NRC finds that the existing requirements in § 50.55a(b)(2)(vi) only address the applicable edition and addenda of IWE and IWL to be used during initial 120-month interval for the ISI of Class CC and Class MC components. Therefore, § 50.55a(b)(2)(vi) is revised to clarify that the 1992 Edition with the 1992 Addenda, or the 1995 Edition with the 1996 Addenda of IWE and IWL must be used when implementing the initial 120-month interval for the ISI of Class MC and Class CC components, and that successive 120-month interval updates must be implemented in accordance with § 50.55a(g)(4)(ii).

The proposed rule would add a new § 50.55a(g)(6)(ii)(B)(*1*) to clarify the start date of the first 120-month interval for the ISI of Class MC and Class CC components. Some commenters indicated that § 50.55a(g)(6)(ii)(B)(*1*) in the proposed rule did not clarify the start date of the first 120-month interval for the ISI of Class MC and Class CC components. Other commenters suggested a revised regulation that they thought would be more appropriate.

The NRC finds that the proposed regulation regarding the start date of the first 120-month interval for the ISI of Class MC and Class CC components has created confusion rather than clarifying existing requirements as intended. The clarification in the proposed rule would also create a hardship for many licensees in reestablishing the start date of their first 120-month containment ISI interval. It was not the intent of the NRC to alter the 10-year examination interval in IWE or the 5-year examination interval in IWL already established by licensees. Licensees are permitted to schedule examinations of Class MC and Class CC components in accordance with the requirements in IWE and IWL. Therefore, the clarification of the first 120-month interval start date in § 50.55a(g)(6)(ii)(B)(*1*) in the proposed rule is not adopted.

In responding to this clarification, several commenters indicated that the 10-year IWE and 5-year IWL examination intervals must coincide with the 120-month interval update in § 50.55a(b)(4)(ii). The NRC does not agree that the 10-year IWE and 5-year IWL examination intervals must coincide with the 120-month interval update in § 50.55a(b)(4)(ii). The 10-year IWE and 5-year IWL examination intervals are independent of the 120-month interval update in § 50.55a(g)(4)(ii). Section 50.55a(g)(4)(ii) does not prohibit licensees from updating to a later edition and addenda of the ASME Code midway through a

10-year IWE or 5-year IWL examination interval.

In responding to this clarification, several commenters implied that the final rule dated August 8, 1996 (61 FR 41303), requiring licensees to develop and implement a containment ISI program for Class MC components in accordance with IWE of Section XI, authorized the extension of the first period inspection from 40 months to 60 months in duration. The NRC does not agree. The schedule in the containment final rule did not extend the duration of the 40-month inspection period required by IWE. This issue was addressed in the response to Question 13 in a letter to the Nuclear Energy Institute from NRC dated May 30, 1997.

In responding to this clarification, several commenters indicated that the final rules dated August 8, 1996 (61 FR 41303), and September 22, 1999 (64 FR 51370), create a hardship when implementing 120-month interval updates required by § 50.55a(g)(4)(ii). The NRC agrees with this comment. The final rule dated August 8, 1996, required licensees to implement an ISI program for Class MC and Class CC components using the 1992 Edition with the 1992 Addenda of IWE and IWL. The final rule dated September 22, 1999, required licensees to implement Appendix VIII UT qualification requirements using the 1995 Edition with the 1996 Addenda of Section XI. Consequently, the schedule for 120-month interval updates for the ISI of Class MC and Class CC components, Appendix VIII UT qualification requirements, and the ISI of Class 1, 2, and 3 components might not coincide. This creates a hardship for licensees because ISI programs are required to maintain up to 3 separate editions and addenda of Section XI—one edition and addenda applicable to the ISI of Class MC and Class CC components, another edition and addenda applicable to the ISI of Class 1, 2, and 3 components, and a third edition and addenda applicable to Appendix VIII UT qualification requirements. Therefore, licensees may wish to synchronize 120-month interval updates such that the same edition and addenda of Section XI apply to the ISI of Class MC and Class CC components, Appendix VIII UT qualification requirements, and the ISI of Class 1, 2, and 3 components. Licensees wishing to synchronize their 120-month intervals may submit a request in accordance with § 50.55a(a)(3) to obtain authorization to extend or reduce 120-month intervals.

2.2.1 Owner-Defined Requirements for Class CC and Class MC Components

The proposed rule addresses NRC concerns with ''owner-defined'' requirements in IWE and IWL. Revisions to the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of IWE and IWL permit each licensee to define requirements that were previously defined in the ASME Code.

A number of commenters indicated that ''owner-defined'' requirements are acceptable because the regulations in Appendix B of 10 CFR 50, ''Quality Assurance Criteria For Nuclear Power Plants and Fuel Reprocessing Plants,'' and the Responsible Engineer/Individual oversight provisions (as delineated in IWE and IWL) ensure that requirements defined by the owner are properly implemented.

The NRC does not agree that the quality assurance requirements in Appendix B of 10 CFR 50 and the oversight duties of the Responsible Engineer/Individual alone are adequate to ensure that owner-defined requirements are properly implemented. The final rule published on August 8, 1996 (61 FR 41303), required licensees to develop and implement a containment ISI program for Class MC and Class CC components in accordance with IWE and IWL. The final containment rule stated that the rule was needed because none of the existing requirements provide specific guidance on how to inspect containment surfaces. This lack of guidance resulted in a large variation with regard to the performance and the effectiveness of licensee containment inspection programs. Based on the results of inspections and audits, as well as plant operational experiences, it was clear to the NRC that without specific guidance, several licensee containment inspection programs were unable to detect degradation that could ultimately result in a compromise to the containment pressure-retaining capability. Some containment structures had been found to have undergone a significant level of degradation that was not detected by existing programs. Given the number and the extent of the occurrences, and the variability among plants with regard to the performance and the effectiveness of containment inspections, the NRC believed that the prudent course of action was to impose the more specific ISI inspection requirements in the 1992 Edition with the 1992 Addenda of IWE and IWL. The containment final rule imposed requirements that define comprehensive and technically sound methods that ensure uniform containment inspection results among all licensees.

The NRC believes that it is inappropriate to approve Code provisions that do not contain specific containment inspection guidance when prior experience demonstrates that specific containment inspection guidance is necessary. The quality assurance provisions in Appendix B of 10 CFR 50 and the oversight duties of the Responsible Engineer/Individual do not ensure uniform containment inspection results among all licensees. Furthermore, the quality assurance provisions in Appendix B of 10 CFR 50 did not prevent the previous problems associated with a lack of guidance. Reliance on Appendix B of 10 CFR 50 resulted in a large variation in the performance and effectiveness of licensees' containment inspection programs that contributed to the NRC issuing the containment final rule.

2.2.1.1 Visual Examination Qualification Requirements (Class CC Components)

Section 50.55a(b)(2)(viii)(F) in the proposed rule would require that personnel who conduct visual examinations of containment surfaces be qualified in accordance with the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–2300 in place of the ''owner-defined'' qualification provisions in the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWL–2310(d). Prior to the 1998 Edition, the NRC-approved provisions in IWA–2300 were used to define the qualification requirements for personnel who conduct visual examinations of containment surfaces. The qualification requirements were revised in IWL–2310(d), 1997 Addenda, to allow the owner to define the qualification requirements for personnel who perform visual examinations of concrete and tendon anchorage hardware, wires, or strands. However, the new Code provision does not provide any criteria that the licensee must use when developing qualification requirements. Therefore, the NRC proposed that licensees continue to use the provisions in IWA–2300 to qualify personnel who perform visual inspections of containment concrete surfaces and tendon anchorage hardware, wires, or strands.

Several commenters recommended that the NRC specify the use of a more generic standard for qualification of containment examiners such as ANSI N45.2.6, ''Qualifications of Inspection, Examination, and Testing Personnel for Nuclear Power Plants,'' to define personnel qualification provisions in

place of the requirements in IWA–2300. One commenter stated that licensees typically commit to meet the requirements of Regulatory Guide 1.58, ''Qualification of Nuclear Power Plant Inspection, Examination, and Testing Personnel (Revision 1, September 1980),'' or another NRC-approved standard that endorses ANSI N45.2.6. Another commenter noted that use of the qualification standards of IWA–2300, as proposed by the NRC, is not appropriate because they were designed for examinations associated with piping systems and their supports and not containment examinations.

The NRC disagrees with the comments because the use of ''owner-defined'' qualification requirements or a generic quality assurance standard to qualify containment examiners does not provide adequate guidance to ensure that examiners are qualified to inspect containment surfaces. The NRC prefers instead that the ASME Code identify the specific elements deemed necessary to ensure containment inspection qualification programs are adequate, or describe specific criteria that licensees must use to qualify personnel performing containment examinations. Although the existing qualification provisions in IWA–2300 were not developed specifically for qualifying examiners of concrete containment surfaces, they provide the most practical criteria that are presently available for qualification of personnel that conduct visual examinations of containment surfaces. The NRC notes that many of the changes in the later editions and addenda of IWE and IWL are more suited to containment examinations than earlier editions and addenda. The NRC withdrew Regulatory Guide 1.58 on July 31, 1991 (56 FR 36175). Therefore, the NRC no longer endorses the use of ANSI 45.2.6 for the ISI of containment surfaces in operating nuclear power plants. Section 50.55a(b)(2)(viii)(F) in the proposed rule is adopted without change.

2.2.1.2 Visual Examination Qualification Requirements (Class MC and Liners of Class CC)

Section 50.55a(b)(2)(ix)(F) of the proposed rule would require that personnel who conduct visual examinations of containment surfaces be qualified in accordance with the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–2300 of in place of the ''owner-defined'' qualification provisions in the 1998 Edition, 1999 Addenda, and 2000 Addenda IWE–2330(a). Prior to the 1998 Edition, the NRC approved provisions in IWA–2300 were used to define the qualification requirements for personnel who conduct visual examinations of containment surfaces.

There was one public comment on § 50.55a(b)(2)(ix)(F), which is discussed in the following Section 11, Backfit Analysis. In consideration of the public comment, the qualification requirements for personnel that conduct visual inspections of containment surfaces have been revised to require that VT–1 and VT–3 examinations must be conducted in accordance with the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–2200. Personnel conducting examinations in accordance with the VT–1 or VT–3 examination method shall be qualified in accordance with the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–2300.

2.2.1.3 General and Detailed Visual Examinations

Section 50.55a(b)(2)(ix)(G) in the proposed rule would require that the general and detailed visual examinations required by the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWE–2310(b) and IWE–2310(c) meet the VT–1 and VT–3 examination method provisions in the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–2210 in place of the ''owner-defined'' general and detailed visual examination provisions in the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWE–2310(a), and allow licensees to continue to extend Table IWA–2210–1 maximum direct examination distance and decrease Table IWA–2210–1 minimum illumination requirements as currently stated in § 50.55(b)(2)(ix)(B).

The distance and illumination requirements in § 50.55a(b)(2)(ix)(G) in the proposed rule have been removed because these requirements are addressed in the existing § 50.55a(b)(2)(ix)(B). There was one public comment on § 50.55a(b)(2)(ix)(G), which is discussed in the following Section 11, Backfit Analysis. In consideration of the public comment, § 50.55a(b)(2)(ix)(G) is revised to require that the VT–1 and VT–3 examination methods in the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–2200 be used to conduct specific visual examinations in Table IWE–2500–1 in place of the ''owner-defined'' visual examination methods in the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWE–2310(b) and IWE–2310(c). The VT–3 examination method must be used to conduct the examinations in Items E1.12 and E1.20 of Table IWE–2500–1, and the VT–1 examination method must be used to conduct the examination in Item E4.11 of Table IWE–2500–1. An examination of the pressure-retaining bolted connections in Item E1.11 of Table IWE–2500–1 using the VT–3 examination method must be conducted once each interval.

2.2.2 Examination of Containment Bolted Connections

Section 50.55a(b)(2)(ix)(H) of the proposed rule would require that the acceptance standard in the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWC–3513 be used to evaluate flaws in pressure-retaining bolting greater than or equal to 51 millimeters [2.0 inches] in diameter which are identified during the examination of containment surfaces. The acceptance standard would be used in place of the ''owner-defined'' acceptance standard in the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWE–3510.1.

Several commenters stated that § 50.55a(b)(2)(ix)(H) of the proposed rule is unnecessary because there are no substantial differences between the revised standard for bolting materials in the 1998 Edition and the standard for bolting materials in editions and addenda earlier than the 1998 Edition. The NRC disagrees. The bolting standard for bolting materials in the editions and addenda of IWE–3515.1 earlier than the 1998 Edition was significantly revised in the 1998 Edition. Prior to the 1998 Edition, IWE–3515.1 stated that bolting material must be examined in accordance with the material specification for defects which may cause the bolted connection to violate either the containment leak-tight or structural integrity. IWE–3515.1 was revised and renumbered as IWE–3510.3 in the 1998 Edition to require that the owner define the standard for examining bolting materials. Since containment bolting is not unique from other bolting applications in Section XI, the NRC finds that the examination of containment bolting should be consistent with other Section XI bolting examination requirements.

A number of commenters stated that IWC–3513 is not the appropriate standard to use to evaluate flaws in pressure-retaining bolting. One commenter recommended that IWB–3517.1 be used in place of IWC–3513. The NRC agrees and finds that the visual examination criteria for bolting in IWE–3517.1 is an acceptable standard because it enures that the integrity of reused bolting is maintained. Section 50.55a(b)(2)(ix)(H) is revised to require that bolting material be examined in accordance with the material specification or the 1997 Addenda, 1998

Edition, 1999 Addenda, and 2000 Addenda of IWB–3517.1.

Section 50.55a(b)(2)(ix)(I) in the proposed rule would require licensees to supplement the containment bolted connection examination requirements in Items E1.10 and E1.11 of the 1998 Edition, 1999 Addenda, and 2000 Addenda of Table IWE–2500–1 with additional requirements for examining inaccessible areas of containment bolting.

One commenter stated that since the ASME Code requires that accessible areas of containment bolted connections be more frequently examined in the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWE than in the earlier editions and addenda, bolting examination requirements have been enhanced. The NRC disagrees. Although the revised provisions increase the frequency of accessible examinations of containment bolting, the revised provisions reduce the frequency of examinations of inaccessible areas of containment bolting. The 1992 Edition with the 1992 Addenda and the 1995 Edition with the 1996 Addenda of IWE provide acceptable provisions for conducting examinations of the accessible and inaccessible areas of containment bolted connections. Item No. E8.10 of Table IWE–2500–1 requires that a visual examination of the individual parts of the bolted connection using the VT–1 visual examination method be performed whenever a connection is disassembled during a scheduled ISI inspection. Item E8.20 of Table IWE–2500–1 requires that a bolt torque or tension test be performed on bolted connections that have not been disassembled during the inspection interval. A bolt torque or tension test provides an indication of the integrity of the inaccessible areas of a bolted connection. The requirements in Items E8.10 and E8.20 requiring that containment bolting either be disassembled and examined (VT–1), or torque tested every interval were deleted in the 1998 Edition of IWE.

Several commenters suggest that § 50.55a(b)(ix)(I) of the proposed rule be revised to allow the option of conducting visual examinations of the inaccessible areas of containment bolted connections during maintenance that requires a bolted connection be disassembled or during visual examinations that are conducted during scheduled ISI inspections. In consideration of the public comments, the modification that was formerly § 50.55a(b)(ix)(I) in the proposed rule is revised in the final rule to allow licensees the option of performing visual examinations of inaccessible areas of containment bolted connections during maintenance evolutions or scheduled inspections. Any bolted connections that are disassembled during the scheduled performance of Item E1.11 examinations must be examined using the VT–3 examination method. Flaws or degradation identified during the performance of this VT–3 examination must be examined in accordance with the VT–1 examination method. The criteria in the material specification, or the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWB–3517.1 must be used to evaluate bolting flaws or degradation. As an alternative to performing the VT–3 examination during the scheduled performance of Item E1.11, VT–3 examination of bolting may be conducted whenever containment bolting in Item E1.11 is disassembled for any reason. Sections 50.55a(b)(ix)(I) and 50.55a(b)(ix)(H) in the proposed rule have been combined as § 50.55a(b)(ix)(H) in this final rule.

2.2.3 Acceptance Standard for Surfaces Requiring Augmented Ultrasonic Examinations

Section 50.55a(b)(2)(ix)(J) in the proposed rule would require that the ultrasonic (UT) examination acceptance standard specified in the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWE–3511.3 for Class MC pressure-retaining components also apply to metallic liners of Class CC pressure-retaining components. A UT acceptance standard is needed for metallic liners of Class CC pressure-retaining components to evaluate conditions that are identified during an examination that may be unacceptable. Therefore, the NRC proposed to continue to use the UT acceptance standard in IWE–3511.3 for metallic liners of Class CC pressure-retaining components.

Several commenters stated that § 50.55a(b)(2)(ix)(J) of the proposed rule is not needed because the provisions in IWE–3122.3 provide an appropriate standard for evaluating degradation and aging of metallic liners of Class CC pressure-retaining components. The NRC disagrees. Item E4.12 of the 1998 Edition, 1999 Addenda, and 2000 Addenda of Table IWE–2500–1, states that IWE–3511 is the acceptance standard for UT examinations. IWE–3122.3 is not referenced in Table IWE–2500–1 as an acceptance standard. The acceptance standard in IWE–3511 addresses Class MC pressure-retaining components and does not address metallic liners of Class CC pressure-retaining components. Prior to the 1995 Addenda to Section XI, the standard in IWE–3511 addressed Class MC pressure-retaining components and metallic liners of Class CC pressure-retaining components. IWE–3511 was revised in the 1995 Addenda to address only Class MC pressure-retaining components. The NRC believes that the acceptance standard in the 1995 Addenda, 1996 Addenda, 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of IWE–3511 is incomplete because it does not address metallic liners of Class CC pressure-retaining components.

Several commenters stated that § 50.55a(b)(2)(ix)(J) of the proposed rule is inappropriate because a concrete metallic liner can be allowed to significantly degrade and still accomplish its design function. Therefore, imposing an acceptance limit of 10 percent of the nominal wall thickness is extremely conservative and unwarranted.

The NRC disagrees and believes that the UT acceptance limit of 10 percent of the nominal wall thickness is warranted. Concrete containments are constructed with metallic liners as the final leak-tight barrier against radioactive releases to the atmosphere. By the virtue of being anchored to the concrete, the liner carries stresses and strains imparted by the concrete in addition to the loads of the liner itself. General or pitting corrosion occurring in a large area of the liner creates discontinuities in the liner behavior under accident pressure and earthquake loads which would result in a high stress concentration area in the liner. The model tests on concrete containments (*e.g.*, NUREG/CR–5431, ''Round-Robin Analysis of the Behavior of a 1:6 Scale Reinforced Concrete Containment Model Pressurized to Failure: Posttest Evaluation'') have shown that once a liner tear occurs due to high stress concentration, the containment losses its ability to retain radioactive releases. Thus, the liner integrity must be monitored and maintained during the operating life of the containment. The modification in the proposed rule is identical to what was approved for use by the ASME Code in the 1995 Edition and earlier editions and addenda of the ASME Code. Section 50.55a(b)(2)(ix)(J) of the proposed rule is presented here in the final rule as § 50.55a(b)(2)(ix)(I). Section § 50.55a(b)(2)(ix)(I) is otherwise adopted without change.

2.2.4 Containment Penetration Piping

Section 50.55a(b)(2)(xii)(A) in the proposed rule would prohibit welds in high-energy fluid system piping that are located inside a containment penetration assembly or encapsulated by a guard pipe from being exempted from the examination provisions of

Subsection IWC as permitted by the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of IWC–1223. The revised Code provisions appeared to be inconsistent with NRC's guidelines on ''break exclusion zone'' design and examination criteria for containment penetration piping. Specifically, Branch Technical Position EMEB 3–1, ''Postulated Rupture Locations in Fluid System Piping Inside and Outside Containment,'' an attachment to NRC Standard Review Plan (SRP) Section 3.6.2, ''Determination of Rupture Locations and Dynamic Effects Associated with Postulated Rupture of Piping'' (NUREG–0800), allows that breaks and cracks in high-energy fluid piping in containment penetration areas need not be postulated provided that certain criteria are met. These criteria include a commitment that where guard pipes are used, the enclosed portion of fluid system piping should be seamless construction and without circumferential welds unless specific access provisions are made to permit inservice volumetric examination of the longitudinal and circumferential welds; and a 100 percent volumetric inservice examination of all pipe welds is conducted during each inspection interval as defined in IWA–2400 of Section XI of the ASME BPV Code. Licensees may have made commitments to follow the provisions in SRP 3.6.2 as a part of their licensing design basis.

The commenters stated that § 50.55a(b)(2)(xii)(A) of the proposed rule is unnecessary because the regulatory requirements associated with high energy line breaks are independent from the scope of Section XI. Commenters also noted that it is inappropriate for the NRC to impose limitations to maintain commitments used to license plants.

The NRC agrees that the regulatory guidelines associated with high energy line breaks are separate from the regulatory requirements associated with the ISI of nuclear power plant components. The intent of § 50.55a(b)(2)(xii)(A) in the proposed rule was to ensure that licensee commitments regarding high energy line breaks in Branch Technical Positions under SRP 3.6.2 would not be eliminated from a misapplication of the exemption allowed in IWC–1223. The NRC concludes that it is the responsibility of each licensee to ensure that changes to later editions and addenda of the ASME Code are not misapplied to licensing design bases commitments, and that it is inappropriate for the NRC to impose modifications or limitations in § 50.55a to ensure that commitments, not directly related to Section XI requirements but part of the licensing design basis, are maintained. Therefore, § 50.55a(b)(2)(xii)(A) in the proposed rule is not adopted.

Section 50.55a(b)(2)(xii)(B) in the proposed rule would require that piping that penetrates the containment that is connected to a system not in the scope of Section XI (*i.e.*, not safety-related) be pressure tested in accordance with the 1996 Addenda and earlier editions and addenda of IWA–5110(c).

A number of commenters stated that § 50.55a(b)(2)(xii)(B) is unnecessary because the Type C local leak rate test (LLRT) in Appendix J of 10 CFR 50, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors,'' provides an acceptable method for ensuring the leak-tight integrity of the containment penetration piping, and that the test requirements in the editions and addenda of IWA–5110(c) earlier than the 1997 Addenda are redundant. The commenters stated that test equipment used for LLRT is capable of detecting extremely small leakage, and that the regulations in Appendix J of 10 CFR 50 contain acceptance criteria for leakage identified during testing. Commenters also noted that Appendix J does not differentiate between measured leakage emanating out of the piping and out of the containment isolation valves. However, the commenters noted that this determination is unnecessary because the Appendix J maximum allowable leakage limit accounts for all leakage regardless of where it emanates.

The NRC agrees that Appendix J provides an acceptable method for testing the leak-tightness of the containment penetration piping. Appendix J of 10 CFR 50 requires that piping between the containment isolation valves be pressurized with air during seat leak testing of the containment isolation valves. Any leakage emanating from the piping and containment isolation vales is measured and evaluated in accordance the criteria in Appendix J. The NRC finds that the Appendix J Type C LLRT provides an acceptable basis for ensuring the containment penetration piping integrity when the only safety function of the containment penetration piping is to provide containment integrity. Therefore, § 50.55a(b)(2)(xii)(B) in the proposed rule is not adopted.

2.2.5 Certification of Nondestructive Examination (NDE) Personnel

Section 50.55a(b)(2)(xviii)(A) in the proposed rule would require that all Level I and Level II NDE personnel be recertified on a 3-year interval in lieu of the 5-year interval specified in the 1997 Addenda and 1998 Edition of IWA–2314, and the 1999 Addenda and 2000 Addenda of IWA–2314(a) and IWA–2314(b). Prior to 1997, Level I and II NDE personnel were recertified on a 3-year interval.

A number of commenters objected to § 50.55a(b)(2)(xviii)(A) in the proposed rule. The commenters explained that the 1996 Addenda and earlier editions and addenda of IWA–2314 require that Level I and Level II personnel be recertified by qualification examination every 3 years, and that Level III personnel be recertified by qualification examination every 5 years. The commenters stated that the 5-year recertification interval should also be acceptable for Level I and Level II personnel because the 5-year recertification interval for Level III personnel has been approved by the NRC since 1989. The commenters also disagreed with the NRC position that available data do not support recertification examinations at a frequency of every 5 years. On the contrary, the commenters stated that since the recertification interval was increased from 3 to 5 years in 1989 for Level III personnel, there is no data to support that a decrease in proficiency of Level III personnel has occurred. The commenters claimed that the improved annual practice requirements for UT examiners ensure the proficiency of UT examiners is maintained throughout the 5-year period. One commenter stated that Section XI is one of the few standards that require recertification by examination every 3 years, and that other countries recertify personnel every 5 to 10 years.

The NRC did not approve the extension of the recertification frequency from 3 years to 5 years in the proposed rule because the proficiency of examination personnel decreases over time, and available data do not support recertification examinations at a frequency of every 5 years. Although one commenter (a licensee) stated that it has a 100 percent recertification pass rate, the public comments did not provide or reference any data that NRC could review that supports extending the recertification frequency of Level 1 and Level 2 NDE personnel from 3 years to 5 years. Therefore, the NRC is not approving the extension of the recertification interval for Level I and Level II NDE personnel from 3 to 5 years at this time. Section 50.55a(b)(2)(xviii)(A) in the proposed rule is adopted without change.

Section 50.55a(b)(2)(xviii)(B) in the proposed rule would supplement the alternative qualification provisions for

VT–2 visual examination personnel in the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–2316 with the requirements that VT–2 examination personnel pass an initial test and then be retested every 3 years.

Commenters indicated that the intent of IWA–2316 is to only qualify personnel that observe for leakage during system leakage and hydrostatic tests conducted in accordance with IWA–5211(a) and (b), and objected to § 50.55a(b)(2)(xviii)(B) in the proposed rule on the basis that experienced plant personnel such as system engineers, licensed and non-licensed operators, and maintenance staff perform the VT–2 examinations. The commenters argue that the basic knowledge level of these types of personnel is adequate to inspect plant systems during leakage tests. The commenters also note that the NRC has granted relief allowing licensees to implement the VT–2 visual examination qualification conditions in the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–2316 without requiring initial tests and periodic retests. The commenters also noted that the existing NRC-approved requirements in the 1995 Edition with the 1996 Addenda of IWA–2300 require that personnel who conduct NDE be qualified in accordance with CP–189. The commenters stated that VT–2 qualification requirements are not in the scope of CP–189 nor are they addressed in CP–189 because there are no unique technical requirements associated with performing VT–2 examinations. VT–2 examinations are conducted to detect evidence of leakage from pressure-retaining components during system pressure tests. The use of special equipment, examination techniques, and evaluation of test results associated with other NDE methods such as volumetric and surface examinations are not applicable to VT–2 examinations. VT–2 examinations do not include the evaluation of the material conditions of components, such as degraded conditions like loose bolting or corrosion. The commenters also stated that the proposed § 50.55a(b)(2)(xviii)(B) is unnecessary because plant administrative procedures require that personnel involved in testing be briefed prior to the test, and special requirements for conducting the VT–2 examinations are covered during the pretest brief.

The NRC agrees that there are no special or unique technical requirements associated with performing VT–2 examinations that require personnel to observe for leakage of liquids or condensation during system leakage or hydrostatic testing. However, VT–2 visual examiners also conduct other evolutions that are more complex than observing for leakage during a leakage or hydrostatic tests. Visual examiners that are VT–2 qualified also perform bubble, halogen diode leak, and mass spectrometer testing requiring the use of special equipment and examination techniques. The NRC believes that VT–2 qualification requirements in IWA–2316 should be limited to personnel that only observe for leakage of liquids or condensation during system leakage or hydrostatic testing. Therefore, § 50.55a(b)(2)(xviii)(B) is revised to clarify that IWA–2316 may only be used to qualify personnel that observe for leakage during the performance of system leakage and that hydrostatic tests are to be conducted in accordance with the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–5211(a) and (b).

Section 50.55a(b)(2)(xviii)(C) in the proposed rule would supplement the alternative qualification provisions for VT–3 visual examination personnel in the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–2317 with the requirements that VT–3 examination personnel pass an initial test and then retested every 3 years.

Several commenters objected to § 50.55a(b)(2)(xviii)(C) in the proposed rule because experienced personnel are familiar with the performance of VT–3 examinations, and the VT–3 examination is a straightforward technique. The NRC does not agree because the material condition of many different types of components are required to be evaluated during the performance of VT–3 examinations, and there are different technical acceptance criteria specified for the many different components. For example, the acceptance criteria for examining bolting is different from the acceptance criteria for examining containment metal surfaces. Furthermore, there are critical technical requirements associated with the minimum illumination, distance, and character height that must be adhered to when performing VT–3 examinations. There are a number of options available to the VT–3 examiner that complicate qualification requirements. For example, remote visual examination can be substituted for direct visual examination resulting in the use of special test equipment. The NRC concludes that testing is required to demonstrate that VT–3 examiners are knowledgeable regarding the different requirements associated with the examination method, and that these testing requirements are consistent with other NDE methods in CP–189 that require testing to demonstrate the required knowledge. Therefore, § 50.55a(b)(2)(xviii)(C) is revised to clarify that the alternative qualification provisions for VT–3 visual examination personnel in the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–2317 may be used provided that VT–3 examination personnel pass an initial test and a retest every 3 years.

2.2.6 Substitution of Alternative Methods

Section 50.55a(b)(2)(xix) in the proposed rule would prohibit the use of the provision in IWA–2240 (1998 Edition, 1999 Addenda, and 2000 Addenda) and IWA–4520(c) (1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda), which allows alternative examination methods, a combination of methods, or newly developed techniques to be substituted for the methods specified in the Construction Code, provided the Authorized Nuclear Inservice Inspector (ANII) is satisfied that the results are demonstrated to be equivalent or superior to those in the Construction Code. The revision to IWA–2240 changed the applicability of the paragraph from Section XI only (ISI) to both Sections III and XI (design/construction and ISI).

A number of commenters stated that editions and addenda of Section XI approved by the NRC since the 1974 Edition of Section XI allow ANIIs to approve the substitution of alternative methods, a combination of methods, or newly developed techniques for the examinations specified in Section XI, Division 1. For example, the ANII can approve the substitution of an eddy current examination for a surface examination requirement in IWB and IWC of Section XI provided the ANII is satisfied that the results of the eddy current examination are equivalent or superior to those of the surface examination. Most of the commenters stated that the NRC should accept the revised provisions in the 1998 Addenda, 1999 Addenda, and 2000 Addenda of IWA–2240 and the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–4520(c) that extend the substitution of the alternative examination provisions to the examinations specified in the Construction Code when performing repair/replacement activities. The commenters stated that ANII qualifications require detailed knowledge of the different examination methods addressed in Section XI and the Construction Code. One commenter stated that ASME QAI–1–1995, ''Qualifications for Authorized

Inspection,'' is the applicable qualification standard that must be used to qualify ANIIs, and that ASME QAI–1–1995 requires that ANIIs be certified in Section XI and Construction Code requirements. An example of a use of the revised provisions provided by the commenters indicated that in some instances it may be a hardship or impractical to perform a radiographic (RT) examination during a Section XI repair/replacement activity as specified in the Construction Code. The revised provisions in Section XI would allow the substitution of an alternative method such as an UT examination for the RT examination provided that the ANII is satisfied that the results of the UT examination are equivalent or superior to the RT examination specified in the Construction Code.

The NRC agrees that the provisions in IWA–2240 that allow the ANII to approve the substitution of alternative examination methods, a combination of methods, or newly developed techniques for the methods specified in Section XI, Division 1, have been approved by the NRC since 1974. The NRC has reviewed the qualification standard in ASME QAI–1–1995, and agrees that ANIIs are required to be knowledgeable regarding the NDE methods, qualification requirements, and other requirements in Section XI and the Construction Code. However, the NRC believes that the substitution of alternative methods for those specified in the Construction Code is significantly more complex than what was previously approved by the NRC in editions and addenda of IWA–2240 earlier than the 1998 Edition. For example, there are many factors that have to be evaluated when substituting a UT examination for an RT examination required by the Construction Code. Consideration needs to be given to the thickness of the weld, volume of the UT examination, appropriate UT technique, UT examination coverage criteria, UT examination procedure (Section V or Section XI), and performance demonstration methodology; calibration block material, thickness, and size; flaw evaluation acceptance criteria, and demonstration and qualification criteria for single-sided UT examinations. Weld material would also be a critical factor when considering the substitution of a UT examination for an RT examination. It may not be appropriate to allow the substitution of a UT examination for an RT examination for certain materials such as ferritic or austenitic cast products and corrosion resistant cladding with butt welds. Substitution of a UT examination for an RT examination may be acceptable for dissimilar metal welds but would require additional factors to be evaluated. The NRC finds that there is a lack of guidance in the Code to ensure proper consideration of factors when substituting alternative examinations for the examinations specified in the Construction Code. The NRC believes that a standardized repeatable methodology that can be consistently used among all licensees is needed not only to demonstrate that the alternative method is equivalent or superior to that specified in the Construction Code, but also to ensure consistent application and implementation of IWA–2240 and IWA–4520(c). Furthermore, the NRC notes that the ASME is currently developing a Code Case that will provide the necessary guidance to allow the substitution of a UT examination with an RT examination when an RT examination is required by the Construction Code. Therefore, § 50.55a(b)(2)(xix) in the proposed rule is adopted without change.

2.2.7 System Leakage Tests

Section 50.55a(b)(2)(xx) in the proposed rule would have required that the pressure and temperature hold time requirements in the 1995 Edition of IWA–5213(a) be applied in place of the revised provisions of the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–5213(a) when performing system leakage tests.

Many commenters objected to this modification because pressure and temperature hold time requirements in the 1995 Edition of IWA–5213(a) imposed by the modification place what the commenters believe to be an undue burden on utilities. One commenter noted that the ASME is currently developing a new revision to IWA–5213 to clarify the pressure and temperature hold time requirements in IWA–5213(a). A number of commenters stated that the NRC is arbitrarily choosing the pressure and temperature hold times in the 1995 Edition, and that the NRC should justify the use of the pressure and temperature hold times in the 1995 Edition.

The NRC normally requires that the Code revision most recently approved by the NRC be used when it does not approve the use of a later Code provision. Since the NRC has not approved the elimination of the pressure and temperature hold times in 1995 Addenda of IWA–5213, the NRC proposed to require the use of the pressure and temperature provisions in the 1995 Edition. The NRC agrees with the commenters that the changes in the 1989 Addenda through the 1995 Edition in conjunction with the proposed modification would create unintended test conditions. For example, some systems are not designed to operate at test conditions for the period of time necessary to meet the hold time conditions. Also, hold times are not necessary for leakage tests of Class 1 components because these leakage tests are normally performed following each refueling outage as the reactor is heating up. The heatup process of the reactor is performed within the pressure-temperature constraints of the heatup curve in the plant technical specifications. These constraints limit the rate of temperature and pressure increase resulting in a heatup period of several hours. In light of the substantial length of time required for the reactor heatup process, sufficient time is available for leakage from the Class 1 system to collect in sufficient quantity to be detectable by visual examination. Holding the Class 1 components for additional time at this temperature and pressure is unnecessary to accomplish the purpose of the pressure test.

In consideration of the public comments, the NRC has revised the pressure and temperature hold time requirements in § 50.55a(b)(2)(xx) to be consistent with the revisions recommended in several of the public comments (to use the provisions contained in the 1989 Edition of the ASME Code). This is also consistent with the current ASME proposed revision to the pressure and temperature hold times in IWA–5213. Section 50.55a(b)(2)(xx) requires a 10-minute holding time after attaining test pressure for Class 2 and Class 3 components that do not normally operate during operation, and no holding time is required for the remaining Class 2 and Class 3 components provided that system has been in operation for at least 4 hours for insulated components or 10 minutes for uninsulated components.

2.2.8 Table IWB–2500–1 Examination Requirements

Section 50.55a(b)(2)(xxi)(A) in the proposed rule would require licensees to use the provisions in the 1998 Edition of Table IWB–2500–1, Examination Category B–D, for Items B3.40 and B3.60 (Inspection Program A) and Items B3.120 and B3.140 (Inspection Program B) when using the 1999 Addenda and the 2000 Addenda. The 1999 Addenda eliminated the pressurizer and steam generator (SG) nozzle inside-radius inspections in Table IWB–2500–1, Examination Category B–D, Items B3.40 and B3.60 (Inspection Program A) and Items B3.120 and B3.140 (Inspection Program B).

Several commenters summarized the results of a white paper developed by the ASME that provides the technical basis for eliminating the pressurizer and SG nozzle inside-radius UT examinations from Table IWB–2500–1. The commenters explained the difficulties associated with performing UT examinations of pressurizer and SG nozzle inside radii. Radiation exposure to personnel who conduct the UT examinations is a significant concern because the pressurizer and SG nozzles are located in very high radiation areas. The geometry and material of the nozzles significantly complicate the UT examination procedure making it difficult to obtain meaningful UT data. The commenters stated that the basis for eliminating the pressurizer and SG nozzle inner radius examinations is that a review of UT and visual examination data from pressurizer and SG nozzle inner radius examinations reveal that no service-induced flaws were detected in any of the examinations performed. Commenters claimed that pressurizer and SG nozzle cracking incidents have not occurred at any nuclear facilities, and that structural integrity evaluations of the nozzles indicate that leakage would occur from a through-wall flaw before any integrity problems would occur (*ie.,* the nozzle would leak before it failed). In addition, a risk assessment indicated that the failure probability of the nozzles is extremely low under plant operating conditions, and shows that there is no change in risk if pressurizer and SG nozzle inner radius examinations are eliminated. Finally, the commenters stated that the NRC has granted relief from the pressurizer and SG inside-radius UT examination requirements in Table IWB–2500–1 to many licensees because of these concerns associated with occupational exposure and difficulty in obtaining meaningful UT data.

The NRC disagrees. Operating history alone does not provide adequate justification to eliminate examinations of the pressurizer and SG nozzle inside radii because operational experience also has demonstrated that components degrade as they age. Although pressurizer and SG nozzle cracking incidents have not occurred, cracks have been identified in other nozzles such as the feedwater nozzles. Furthermore, a leak-before-break evaluation is not adequate justification to eliminate the examination of the pressurizer and SG nozzle inside radii because the primary purpose of the ISI requirements in Section XI is to identify and correct component degradation before it becomes significant. Leakage from any pressurizer or SG nozzle would be significant because such leakage would represent an unisolable breach of the reactor coolant pressure boundary.

The NRC agrees that a number of licensees have requested relief from the UT examination requirements for SG nozzle inner radii and pressurizer nozzle inner radii. In these cases, the NRC has authorized, as an alternative to UT examination, the performance of a visual examination which utilizes equipment with enhanced magnification that has a resolution sensitivity to detect a 1-mil width wire or crack. The flaw length acceptance criteria specified for the UT examination in Table IWB–3512–1 is applicable to the visual examination. The primary degradation mode for these nozzles is fatigue which produces hairline surface indications that network along the circumference of the nozzle at the inner radius section. Ultrasonic examination of the inner radii from the outside surface should detect these indications. However, even with the use of improved technology from the outside surface, the complex geometry of these nozzle inner radius sections prevents complete coverage. Visual examination for some of these nozzles from the inside surface is easier and less costly to accomplish, and coverage is more complete. The examinations can be performed when the pressurizer and SG are opened for other maintenance or inspection activities. Use of video equipment with enhanced magnification that has a resolution sensitivity to detect a 1-mil width wire or crack is similar to UT examination regarding the capability of detecting fatigue-type cracks on nozzle inside radii before they become detrimental to structural integrity.

Therefore, § 50.55a(b)(2)(xxi)(A) is revised to allow the option of performing a visual examination with enhanced magnification that has a resolution sensitivity to detect a 1-mil width wire or crack, utilizing the allowable flaw length criteria of Table IWB–3512–1 in place of a UT examination. Section 50.55a(b)(2)(xxi)(A) requires that licensees use the provisions of Table IWB–2500–1, Examination Category B–D, Items B3.40 and B3.60 (Inspection Program A) and Items B3.120 and B3.140 (Inspection Program B) of the 1998 Edition when using the 1999 Addenda and the 2000 Addenda. A visual examination with enhanced magnification that has a resolution sensitivity to detect a 1-mil width wire or crack, utilizing the allowable flaw length criteria in the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Table IWB–3512–1 may be performed in place of a UT examination.

Section 50.55a(b)(2)(xxi)(B) in the proposed rule would require that licensees apply the provisions in the 1995 Edition of Table IWB–2500–1, Examination Category B–G–2, Item B7.80 when using the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda. The 1995 Edition and earlier editions and addenda of Section XI require a visual examination of control rod drive (CRD) housing bolting using the VT–1 visual examination method whenever the CRD housing is disassembled. The requirement to examine CRD bolting whenever the CRD housing is disassembled was deleted in the 1995 Addenda.

Several commenters stated that § 50.55a(b)(2)(xxi)(B) should be deleted because the skill of the craft and maintenance practices are sufficient to ensure that bolting is not damaged during maintenance activities. The NRC agrees that the scope of Section XI does not normally include examinations that are conducted during routine maintenance activities, but notes there may be maintenance-related activities associated with ISI. The ISI of components to verify that service-related degradation is not occurring is within the scope of Section XI.

The majority of the commenters stated that no degradation of CRD bolting has occurred in 30 years of experience, and hence the requirement to examine the CRD bolting should be eliminated. The NRC disagrees. Operating history alone does not provide adequate justification to eliminate examinations of CRD bolting because operational experience also has demonstrated that components degrade as they age. Furthermore, the NRC is aware of an example where CRD bolting was replaced in two units because examination of CRD bolting identified cracks.

Several commenters stated that the NRC is misinterpreting the ASME Code because Item B7.80 of Table IWB–B7.80 does not require that the CRD housing be disassembled to perform the examination of CRD bolting. The NRC notes that although the Code does not require disassembly of the CRD housing to examine the bolting, Item B7.80 of Table IWB–2500–1 in the 1995 Edition and earlier editions and addenda of Section XI states that the extent and frequency of the examination is to include bolts, studs, and nuts in CRD housings when disassembled. The NRC finds that the 1995 Edition and earlier editions and addenda of Section XI only require that CRD bolting be examined when the CRD housing is disassembled

such as during a repair or maintenance activity.

Several other commenters stated that since CRD mechanisms are usually contaminated and in high radiation areas, elimination of the bolting examinations reduces radiation exposure to personnel. The NRC notes that CRD bolting is normally relocated to a storage area after disassembly of the CRD housing. Therefore, VT–1 examination personnel typically examine the bolting when it is removed and remotely located from the CRD mechanism, reducing the exposure to individuals.

One commenter requested that the NRC revise § 50.55a(b)(2)(xxi)(B) to include a statement that only CRD bolting that is reused is required to be examined. It was the NRC's intent to require examination of the CRD bolting material only if it was to be reused. Therefore, § 50.55a(b)(2)(xxi)(B) is revised to clarify that only CRD bolting that is reused must be re-examined.

Section 50.55a(b)(2)(xxi)(C) in the proposed rule would require that licensees use the provisions in the 1995 Addenda of Table IWB–2500–1, Examination Category B–K, Item B10.10, when using the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda for the examination of welded attachments to pressure vessels. The 1997 Addenda permits performance of a single-side surface examination in place of a surface examination from both sides of the weld, whereas the 1995 Addenda requires the performance of a single-side volumetric examination of the weld in place of surface examination of the inaccessible surface if surface examination from both sides of the weld is not performed.

Several commenters noted that volumetric examination of reactor pressure vessel (RPV) skirt welds is not practical because UT calibration blocks were typically not supplied for RPV skirt welds and the UT performance demonstration requirements of Appendix VIII do not address RPV support attachment welds. If a licensee wanted to perform a volumetric examination in place of surface examination of both surfaces, it would have to fabricate its own calibration blocks and sample specimens, develop its own procedures, and set up its own demonstration program.

The NRC recognizes that UT examination of RPV skirt welds is not addressed in Appendix VIII at this time. However, the applicable examination requirements are addressed in Article I–2000 of Section XI which in turn references Section V of the ASME BPV Code. Furthermore, Section V of the ASME BPV Code addresses the qualification and use of suitable alternative calibration blocks.

Commenters stated that access under the RPV bottom head for performing a visual examination is a confined space that is also a high radiation area. The inside surface geometry is such that preparation for a surface examination is difficult, thus extending the time spent in the high radiation area. The commenters conclude that the radiation exposure to personnel who examine the inside surface of the RPV skirt weld is not justified. The NRC agrees that access to such confined spaces is very difficult. However, the NRC also believes that the 1995 Addenda of the ASME Code, which already provides for an alternative UT examination in place of a surface examination of the inaccessible surface, appropriately accommodates the commenters concerns. These UT examinations are performed on the accessible surface of the RPV skirt welds. Therefore, personnel are not required to enter the confined space area under the RPV bottom head.

Commenters also stated that RPV skirt weld materials are very flaw-tolerant, with slow flaw-propagation rates. Flaws originating on the inside surface would grow through-wall long before their length would threaten the structural integrity/function of the weld. The NRC notes that the assumption that flaws will be detected before affecting structural integrity is an assumption based on limited surface examination experience and is not supported by rigorous study. The commenters have not presented any analyses or studies which support such an assumption.

Commenters stated that RPV skirt welds are similar to non-pressure boundary core shroud circumferential welds in boiling water reactors. The commenters also stated that safety analyses performed by the Boiling Water Reactor Vessel & Internals Program found that core shroud circumferential welds could be cracked through-wall for 360° and still perform their function. The NRC considers the inference that the structural performance, response, and safety implications of operating with a significantly cracked RPV skirt weld is no different than operating with significantly cracked core shroud circumferential welds to be inappropriate. Operation with cracked core shroud welds has been extensively evaluated for all operating and accident loading conditions. The core shroud is contained within the confines of the reactor pressure vessel with positive restraints holding it in place to assure integrity and adequate coolant flow through the core. However, operation with a significantly cracked RPV skirt weld has not been evaluated. Therefore, the NRC has no basis to conclude that operation under such conditions is acceptable. Commenters also claim that the excellent service history of RPV skirt welds demonstrates that inside surface examinations of welds is not warranted. The NRC considers that operating history alone does not provide adequate justification to eliminate examinations of components because operational experience has also demonstrated that components degrade as they age. Therefore, § 50.55a(b)(2)(xxi)(C) in the proposed rule is adopted without change.

2.2.9 Supplemental Annual Training Requirements for Ultrasonic Examiners

Section 50.55a(b)(2)(xxii) in the proposed rule would require licensees to apply the UT examiner supplemental annual training provisions in the 1998 Edition of Paragraph VII–4240 of Appendix VII, in place of the revised provisions in the 1999 Addenda and 2000 Addenda of VII–4240.

Several commenters stated that the NRC position on training requirements for UT examiners in § 50.55a(b)(2)(xxii) of the proposed rule is inconsistent with the NRC position on training requirements for UT examiners in final rule 64 FR 51370 (September 22, 1999). The commenters noted that the final rule imposed § 50.55a(b)(2)(xiv) because the 10-hour classroom training requirement in VII–4240 was inadequate. The commenters stated that Code Case N–583, ''Annual Training Alternative,'' was developed by the ASME to specifically address the NRC concern with the 10-hour classroom training requirement in the 1995 Edition and 1996 Addenda of VII–4240. Code Case N–583 was incorporated into the 1999 Addenda of VII–4240, replacing the 10-hour classroom training requirement with an 8-hour training requirement to analyze data from material or welds containing flaws similar to those that may be encountered during UT examinations. The commenters stated that the revised training requirements in the 1999 Addenda of VII–4240 are an improvement over the training requirements in the 1998 Edition and earlier editions and addenda of VII–4240. The revised training requirements provide specific criteria that result in uniform training programs among all licensees.

The commenters have clarified to the NRC that the training requirements in the 1999 Addenda and 2000 Addenda of VII–4240 specify hands on training in

place of classroom training. Therefore, § 50.55a(b)(2)(xxii) in the proposed rule is not adopted because after further clarification, the NRC finds that the training requirements in 1999 Addenda and 2000 Addenda of VII–4240 are consistent with the NRC position on training requirements for UT examiners in final rule 64 FR 51370 (September 22, 1999).

Commenters requested that licensees be allowed to substitute the supplemental practice in the 1999 Addenda and 2000 Addenda of VII–4240 for the existing hands-on training requirement in § 50.55a(b)(2)(xiv). The NRC finds that the supplemental practice as described in VII–4240 of Supplement VII of Section XI, 1999 Addenda and 2000 Addenda, is an acceptable alternative to the existing hands-on training requirement in § 50.55a(b)(2)(xiv) provided that the supplemental practice is performed on material or welds that contain cracks, or by analyzing prerecorded data from material or welds that contain cracks. Therefore, § 50.55a(b)(2)(xiv) is revised to allow the option of performing the supplemental practice as described in VII–4240 of Supplement VII of Section XI, 1999 Addenda and 2000 Addenda, or the existing hands-on training requirement.

2.2.10 Underwater Welding

Section 50.55a(b)(2)(xxiii) in the proposed rule would require licensees to demonstrate the acceptability of the underwater welding method through the use of a mockup using material with similar neutron fluence levels, when welding irradiated material underwater in accordance with the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–4660.

Several commenters stated that the use of a mockup to demonstrate the acceptability of an underwater welding method is impractical due to unavailability of materials with similar neutron fluence levels, personnel exposure, high-cost of mockups, and handling and disposal requirements. The commenters also stated that the industry is currently developing an acceptable underwater welding technique for irradiated materials in conjunction with the Boiling Water Reactor Vessel & Internals Project that will be submitted to the NRC for approval.

The NRC proposed the use of a mockup because underwater weld repairs using conventional welding techniques on in-vessel components exposed to high neutron fluences may be unsuccessful due to helium-induced cracking and radiation damage, unless special welding techniques are used. The NRC has revised the proposed underwater welding mockup requirement because of the impracticality of developing and using a mockup with similar neutron fluence levels. Section 50.55a(b)(2)(xxiii) is revised to prohibit the use of the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–4660 to weld irradiated material underwater. Licensees must obtain NRC approval in accordance with § 50.55a(a)(3) of the technique used to weld irradiated material underwater. Section 50.55a(b)(2)(xxiii) of the proposed rule is presented here in the final rule as § 50.55a(b)(2)(xii).

2.3 Appendix VIII to Section XI

This final rule extends the applicability of the existing regulations in § 50.55a(b)(2)(xv) to the 1997 Addenda, the 1998 Edition, 1999 Addenda, and 2000 Addenda of Appendix VIII of Section XI of the ASME BPV Code.

2.3.1 Examination Coverage for Dissimilar Metal Pipe Welds

The existing requirements in § 50.55a(g)(6)(ii)(C)(1) state that Supplement 10, ''Qualification Requirements for Dissimilar Metal Piping Welds,'' of Appendix VIII to Section XI must be implemented by November 22, 2002. Therefore, the proposed rule would have updated § 50.55a(b)(2)(xv)(A) to reference Supplement 10. Specifically, the proposed rule would revise §§ 50.55a(b)(2)(xv)(A)(*1*) and (A)(*2*) to provide UT examination coverage criteria for dissimilar metal piping welds. Examination coverage criteria for dissimilar metal piping welds are specified in the 1989 Edition and earlier editions and addenda of Appendix III of Section XI. Appendix VIII was added in the 1989 Addenda of Section XI, and Section XI would require that the UT examination criteria for piping welds in Appendix VIII supercede the examination criteria in Appendix III. Although Appendix VIII addresses qualification of personnel, procedures, and equipment used to conduct UT examinations of dissimilar metal piping welds, Appendix VIII (unlike Appendix III) does not address UT examination coverage criteria for dissimilar metal piping welds.

The commenters agreed that §§ 50.55a(b)(2)(xv)(A), (A)(*1*) and (A)(*2*) should be revised to provide UT examination coverage criteria for dissimilar metal piping welds. However, the commenters did not agree with the examination coverage criteria in § 50.55a(b)(2)(xv)(A)(*2*) of the proposed rule requiring that dissimilar metal welds be examined from the austenitic side of the weld when examination from both sides is not possible. The commenters stated that § 50.55a(b)(2)(xv)(A)(*2*) should be revised to allow coverage from either the austenitic or ferritic side of the weld when UT examination from both sides is not possible because the composition of the base material is of minor consequence when compared to the effects of the austenitic weld material. Furthermore, the commenters argued that the examination should be conducted from the side of the weld that is most accessible.

The NRC does not agree that the composition of the base material is of minor consequence when compared to the effects of austenitic weld material. There is a higher probability and reliability of identifying flaws in dissimilar metal welds when using a UT procedure qualified to perform examinations from the austenitic side than when using a UT procedure qualified to perform examinations from the ferritic side. Therefore, coverage from the austenitic side of the weld is preferred when UT examination from both sides is not possible.

Sections 50.55a(b)(2)(xv)(A) and (A)(*1*) in the proposed rule are adopted without change. Section 50.55a(b)(2)(xv)(A)(*2*) is revised to clarify that dissimilar metal weld qualifications must be demonstrated from the austenitic side of the weld, and that the examination from the austenitic side of the weld may be used to perform examinations from either side of the weld.

2.3.2 Reactor Vessel Single Side Examinations

The proposed rule would remove the existing § 50.55a(b)(2)(xv)(G)(*4*) because the examination criteria are redundant with the examination criteria contained in § 50.55a(b)(2)(xv)(G)(*3*) and, therefore unnecessary. Both §§ 50.55a(b)(2)(xv)(G)(*3*) and (*4*) allow credit for the full volume when the examination volume is covered from a perpendicular and parallel direction. There were no public comments on the proposed revision; therefore, § 50.55a(b)(2)(xv)(G)(*4*) is removed.

2.3.3 Qualification Test Samples

The revision to § 50.55a(b)(2)(xv)(K)(*1*)(*i*) in the proposed rule would resolve a discrepancy between the existing §§ 50.55a(b)(2)(xv)(K)(*1*)(*i*) and 50.55a(b)(2)(xv)(K)(*4*). Currently, § 50.55a(b)(2)(xv)(K)(*1*)(*i*) states that

flaws which are perpendicular to the weld are not required to be included in the qualification test sample. This requirement conflicts with a provision in § 50.55a(b)(2)(xv)(K)(*4*), which states that test samples must contain flaws that are perpendicular to the weld in the inner 15 percent of the weld, but that these same flaws are not required to be located in the outer 85 percent of the weld. There were no public comments on the proposed revision; therefore, the revision to § 50.55a(b)(2)(xv)(K)(*1*)(*i*) is adopted without change.

2.3.4 Implementation of Appendix VIII to Section XI

Section 50.55a(b)(2)(xv)(M) in the proposed rule would clarify that only those provisions in Supplement 12 to Appendix VIII that relate to the coordinated implementation of Supplement 3 to Supplement 2 performance demonstrations must be implemented. Supplement 12 provides coordinated implementation provisions for the performance demonstrations in Supplements 2, 3, 10, and 11 of Appendix VIII; however, with the exception of the coordinated implementation of Supplement 3 to Supplement 2 performance demonstration, the other coordinated implementation provisions in Supplement 12 are incomplete. Supplement 12 does not provide provisions for implementing single-side examinations as part of the coordinating process, or provide provisions for the coordinated implementation of Supplement 2 or Supplement 11 performance demonstrations to Supplements 3 and 10. There were no public comments on the proposed § 50.55a(b)(2)(xv)(M); therefore, § 50.55a(b)(2)(xv)(M) is adopted without change.

Section 50.55a(g)(6)(ii)(C)(*1*) in the proposed rule would clarify that Appendix VIII to Section XI, 1995 Edition with the 1996 Addenda, as well as its supplements, are mandatory and must be implemented. Although the final rule that implemented Appendix VIII (64 FR 51370; September 22, 1999) requires a phased implementation of Appendix VIII over a 3-year period, the final rule addressed the implementation of the Appendix VIII supplements only and failed to mention the implementation of Appendix VIII itself. The failure to address the implementation of Appendix VIII was an oversight. Section 50.55a(g)(6)(ii)(C)(*1*) in the proposed rule would also eliminate Supplements 12 and 13 of Appendix VIII from the implementation schedule that is currently in § 50.55a(g)(6)(ii)(C)(*1*). Supplements 12 and 13 coordinate the implementation of selected aspects of Supplements 2, 3, 4, 5, 6, 7, 10, and 11 of Appendix VIII. Since the implementation schedule for Supplements 2, 3, 4, 5, 6, 7, 10, and 11 of Appendix VIII is addressed in § 50.55a(g)(6)(ii)(C)(*1*), the imposition of a mandatory implementation date for Supplements 12 and 13 is redundant. There were no public comments on either of the proposed revisions; therefore, the revisions to § 50.55a(g)(6)(ii)(C)(*1*) are adopted without change.

Section 50.55a(g)(6)(ii)(C)(*2*) in the proposed rule would clarify that the requirements of Appendix VIII and the supplements to Appendix VIII to Section XI, of the 1995 Edition with the 1996 Addenda are mandatory when implementing the 1989 Edition and earlier editions and addenda of IWA–2232 of Section XI. Paragraph IWA–2232 provides rules for conducting UT examinations. Appendix VIII was introduced into Section XI in the 1989 Addenda. Before that time, Appendix VIII did not exist in Section XI. Therefore, the 1989 Edition and earlier editions and addenda of IWA–2232 do not reference Appendix VIII. It is not clear to some licensees that they are required to perform UT examinations using personnel, procedures, and equipment qualified in accordance with Appendix VIII. The NRC believes that the final rule dated September 22, 1999 (64 FR 51370), by imposing an expedited implementation of the supplements to Appendix VIII to Section XI, 1995 Edition with the 1996 Addenda, makes it clear that all licensees are required to implement the provisions of Appendix VIII, including those licensees implementing the 1989 Edition or earlier editions and addenda of IWA–2232.

A commenter pointed out that § 50.55a(g)(6)(ii)(C)(*2*) in the proposed rule is inconsistent with the statement of considerations for the proposed rule. The NRC agrees. The purpose of § 50.55a(g)(6)(ii)(C)(*2*) in the proposed rule was to clarify the relationship between the 1989 Edition and earlier editions and addenda of IWA–2232 of Section XI, and Appendix VIII of Section XI. However, in making this clarification, the NRC inadvertently worded § 50.55a(g)(6)(ii)(C)(*2*) such that licensees would be required to update their Appendix VIII program to the latest edition and addenda of Section XI incorporated by reference in § 50.55a(b)(2) following every update. It was not the intent of the NRC to revise the existing 120-month inspection interval update requirement. Therefore, § 50.55a(g)(6)(ii)(C)(*2*) is revised to clarify that licensees implementing the 1989 Edition and earlier editions and addenda of IWA–2232 of Section XI must implement the 1995 Edition with the 1996 Addenda of Appendix VIII of Section XI.

2.4 ASME OM Code

The final rule revises § 50.55a(b)(3) to incorporate by reference the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of the ASME OM Code, and extends the applicability of the existing regulations in §§ 50.55a(b)(3)(ii), 50.55a(b)(3)(iii), 50.55a(b)(3)(iv), and 50.55a(b)(3)(v) to the 1997 Addenda, 1998 Edition, 1999 Addenda, and the 2000 Addenda of the ASME OM Code. Subsections of the ASME OM Code were renumbered in the 1998 Edition; therefore, §§ 50.55a(b)(3)(ii), 50.55a(b)(3)(iii), and 50.55a(b)(3)(iv) are revised and § 50.55a(b)(3)(iv)(D) is added to account for the renumbering.

Although the technical requirements in § 50.55a(b)(3)(ii) were not revised in the proposed rule, several commenters stated that the reference to motor-operated valve (MOV) stroke-time testing in the existing § 50.55a(b)(3)(ii) is confusing because there are other MOV test requirements in the ASME OM Code (such as position indication and seat leakage testing) that are applicable in addition to stroke-time testing. The commenters suggested that a licensee might incorrectly interpret § 50.55a(b)(3)(ii) as requiring that only MOV stroke-time testing be performed in accordance with the OM Code. The NRC believes the current regulation clearly states that licensees must meet all of the ASME Code provisions for testing MOVs. The NRC is not aware of any misunderstanding among licensees regarding the intent of the regulatory requirement for MOVs. However, to avoid any potential confusion in the future, § 50.55a(b)(3)(ii) is revised to clarify that licensees must comply with the provisions of the ASME OM ISTC Code for testing MOVs.

Section 50.55a(b)(3)(vi) in the proposed rule would require an exercise interval of 2 years for manual valves within the scope of the ASME OM Code rather than the exercise interval of 5 years specified in the 1999 Addenda and the 2000 Addenda of the ASME OM Code. The 1998 Edition of the ASME OM Code specified an exercise interval of 3 months for manual valves within the scope of the Code. The 1999 Addenda to the ASME OM Code revised ISTC–3540 to extend the exercise frequency for manual valves to 5 years.

A number of commenters stated that § 50.55a(b)(3)(vi) in the proposed rule should be withdrawn because sufficient justification exists to allow the extension of the exercise interval for manual valves to 5 years. The justification for the 5-year frequency is the simplicity of manual valves (limited number of failure causes) and that the ASME OM Code allows other valves (safety and relief valves) to be tested on a 5-year or longer frequencies.

The NRC does not agree that there is sufficient justification to extend the exercise interval for manual valves to 5 years. The NRC review of licensee IST programs indicate that manual valves are exercised every 3 months except in instances where it is impractical to operate valves during unit operation. Valves are then exercised when the unit is in a cold shutdown condition, and the exercise frequency cannot exceed 2 years. Therefore, a 2-year interval for exercising manual valves is justified because the available manual valve exercise data supports the 2-year interval. The NRC has approved longer test intervals for other types of valves in the ASME OM Code but the longer test intervals include additional means to determine component degradation. For example, although the ASME OM Code test strategy for Class 2 and 3 relief valves has a testing interval of 10 years, Class 2 and 3 relief valves are subject to grouping and sample expansion if there is a test failure. Manual valves that are required to be exercised are not subject to grouping and sample expansion. Furthermore, obstruction from silting or blockage, or corrosion of valve internals are possible failure modes for safety-related manual valves that are not applicable to other types of valves with longer test intervals. Exercising manual valves minimizes both of these failure modes and also allows for more immediate detection if an obstruction or corrosion induced failure occurs. Section 50.55a(b)(3)(vi) is revised to clarify that the interval for exercising manual valves may not exceed 2 years when using the 1999 Addenda and 2000 Addenda of ISTC–3540. Licensees are not prohibited from exercising manual valves more frequently than every 2 years.

3. Section-by-Section Analysis of Substantive Changes

Paragraph (b)(1). This paragraph incorporates by reference the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Section III, Division 1, of the ASME BPV Code. New applicants for a nuclear power plant submitting an application for a construction permit under 10 CFR 50 or design certification under 10 CFR 52 are required to use the 1998 Edition up to and including the 2000 Addenda for the design and construction of the reactor coolant pressure boundary and Quality Group B and C components.

Paragraph (b)(1)(ii). This paragraph extends the applicability of the existing regulation on weld leg dimension requirements to the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Section III of the ASME BPV Code. Applicants and licensees using these Edition and Addenda are not allowed to apply paragraph NB–3683.4(c)(1), Footnote 11 to Figure NC–3673.2(b)–1, and Figure ND–3673.2(b)–1.

Paragraph (b)(1)(iii). This paragraph extends the applicability of the existing regulation on seismic design requirements to the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Section III of the ASME BPV Code. Applicants and licensees using these edition and addenda are not allowed to use Articles NB–3200, NB–3600, NC–3600, and ND–3600.

Paragraph (b)(1)(v). This paragraph extends the applicability of the existing regulation on independence of inspection requirements to the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Section III of the ASME BPV Code. Applicants and licensees using these edition and addenda are not allowed to apply Sub-subparagraph NCA–4134.10(a).

Paragraph (b)(2). This paragraph incorporates by reference the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Section XI, Division 1, of the ASME BPV Code. Licensees of nuclear power plants are required to use the 1998 Edition up to and including the 2000 Addenda when updating their ISI programs in their subsequent 120-month interval under § 50.55a(g)(4)(ii).

Paragraph (b)(2)(vi). This paragraph clarifies that either the 1992 Edition with the 1992 Addenda or the 1995 Edition with the 1996 Addenda of Subsection IWE and Subsection IWL as modified and supplemented by the requirements in § 50.55a(b)(2)(viii) and § 50.55a(b)(2)(ix) must be used when implementing the initial 120-month inspection interval for the containment inservice inspection requirements. Successive 120-month interval updates must be implemented in accordance with § 50.55a(g)(4)(ii).

Paragraph (b)(2)(viii). This paragraph extends the applicability of the existing regulation in paragraph (b)(2)(viii)(E) on concrete containment examination requirements to the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWL, and clarifies that the new modification in paragraph (b)(2)(viii)(F) applies only to the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWL.

Paragraph (b)(2)(viii)(F). This paragraph requires that personnel who perform visual inspections of containment surfaces and tendon anchorage hardware, wires, or strands be qualified in accordance with IWA–2300 in place of the ''owner-defined'' personnel qualification provision in the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWL–2310(d).

Paragraph (b)(2)(ix). This paragraph clarifies that the existing modifications in paragraphs (b)(2)(ix)(A) through (E) of this section on examination of metal containments and liners of Class CC components apply to the 1992 Edition with the 1992 Addenda or the 1995 Edition with the 1996 Addenda of IWE. It also extends the applicability of the regulations in paragraphs (b)(2)(ix)(A) and (b)(2)(ix)(B) to the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWE, and clarifies that the new modifications in paragraphs (b)(2)(ix)(F) through (I) apply only to the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWE.

Paragraph (b)(2)(ix)(F). This paragraph requires that VT–1 and VT–3 examinations of containment surfaces be conducted in accordance with IWA–2200, and that personnel who perform visual inspections of containment surfaces be qualified in accordance with IWA–2300 in place of the ''owner-defined'' examination and personnel qualification provisions in the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWE.

Paragraph (b)(2)(ix)(G). This paragraph requires that the VT–3 examination method be used to conduct the examinations in Items E1.12 and E1.20 in the 1998 Edition, 1999 Addenda, and 2000 Addenda of Table IWE–2500–1 in place of the ''owner-defined'' general visual examination provisions; the VT–1 examination method be used to conduct the examination in Item E4.11 of Table IWE–2500–1 in place of ''owner-defined'' detailed visual examinations; and an examination of the pressure-retaining bolted connections in Item E1.11 of Table IWE–2500–1 using the VT–3 examination method must be conducted once each interval.

Paragraph (b)(2)(ix)(H). This paragraph supplements the examination requirements for containment bolted connections that are in Item E1.11 of the 1998 Edition, 1999 Addenda, and 2000 Addenda of Table IWE–2500–1. Containment bolted connections that are disassembled during the scheduled

performance of the examinations in Item E1.11 of Table IWE–2500–1 must be examined using the VT–3 examination method. Flaws or degradation identified during the performance of a VT–3 examination must be examined in accordance with the VT–1 examination method. The criteria in the material specification or IWB–3517.1 must be used to evaluate containment bolting flaws or degradation. As an alternative to performing VT–3 examinations of containment bolted connections that are disassembled during the scheduled performance of Item E1.11, VT–3 examinations of containment bolted connections may be conducted whenever containment bolted connections are disassembled for any reason.

Paragraph (b)(2)(ix)(I). This paragraph requires that the UT examination acceptance standard specified in the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of IWE–3511.3 for Class MC pressure-retaining components also apply to metallic liners of Class CC pressure-retaining components.

Paragraph (b)(2)(xi). This paragraph extends the applicability of the existing regulation on the use of IWB–1220 to the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Section XI of the ASME BPV Code. Licensees using editions and addenda later than the 1989 Addenda of Section XI are prohibited from exempting components from volumetric and surface examination as allowed by IWB–1220.

Paragraph (b)(2)(xii). This paragraph prohibits the use of the irradiated material underwater weld provisions in the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–4660. Licensees must obtain NRC authorization in accordance with § 50.55a(a)(3) of the method used to weld irradiated material underwater.

Paragraph (b)(2)(xiv). This paragraph allows 8 hours of annual practice as described in VII–4240 of Supplement VII of Section XI, 1999 Addenda and 2000 Addenda, to be performed in place of the existing hands-on training requirement in paragraph (b)(2)(xiv), provided that the supplemental practice is performed on material or welds that contain cracks, or by analyzing prerecorded data from material or welds that contain cracks. In either case, training must be completed no earlier than 6 months prior to performing ultrasonic examinations at a licensee's facility.

Paragraph (b)(2)(xv). This paragraph extends the applicability of the existing regulations on Appendix VIII specimen set and qualification requirements to the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Section XI of the ASME BPV Code. Licensees choosing to use these modifications are required to apply all the modifications under paragraph (b)(2)(xv) except for those in (b)(2)(xv)(F) which are optional.

Paragraphs (b)(2)(xv)(A), (A)(1), and (A)(2). These paragraphs update the UT examination coverage criteria to include examination coverage criteria for dissimilar metal piping welds when using personnel, procedures and equipment that are qualified in accordance with Supplement 10 of Appendix VII to Section XI. Dissimilar metal welds must be examined axially and circumferentially. Where examination from both sides is not possible on dissimilar metal welds, full coverage credit from a single side may be claimed only after completing a successful single-sided Appendix VIII demonstration using flaws on the opposite side of the weld. Dissimilar metal weld qualifications must be demonstrated from the austenitic side of the weld and may be used to perform examinations from either side of the weld.

Paragraph (b)(2)(xv)(G)(4). Paragraph (b)(2)(xv)(G)(*4*) is removed. This requirement is redundant given the requirement in paragraph (b)(2)(xv)(G)(*3*) and is unnecessary. As a result, this revision involves no substantive change.

Paragraph (b)(2)(xv)(K)(1)(i). This paragraph clarifies that flaws perpendicular to the weld located in the outer eighty-five (85) percent of the weld are not required to be included in the qualification test sample. The revision neither increases nor decreases current requirements, but clarifies conflicting requirements that currently exist.

Paragraph (b)(2)(xv)(M). This paragraph clarifies that only the provisions in Supplement 12 to Appendix VIII that are related to the coordinated implementation of Supplement 3 to Supplement 2 performance demonstrations are required to be implemented.

Paragraph (b)(2)(xvii). This paragraph extends the applicability of the existing regulation on reconciliation of quality requirements to the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Section XI of the ASME BPV Code. Licensees using IWA–4200 of this edition and these addenda are required to procure replacement and repair items under its approved quality assurance program required by Appendix B of 10 CFR 50. The limitation does not permit licensees to use IWA–4200 to procure repair and replacement items to be used in ASME Code safety-related applications that are manufactured under a non-nuclear code or non-nuclear standard without an approved quality assurance program.

Paragraph (b)(2)(xviii)(A). This paragraph requires that Level I and II NDE personnel be recertified on a 3-year interval in lieu of the 5-year interval specified in IWA–2314.

Paragraph (b)(2)(xviii)(B). This paragraph requires that IWA–2316 may only be used to qualify personnel that observe for leakage during system leakage and hydrostatic tests conducted in accordance with IWA–5211(a) and (b).

Paragraph (b)(2)(xviii)(C). This paragraph requires that when qualifying VT–3 examination personnel in accordance with IWA–2317, the proficiency of the training must be demonstrated by administering an initial qualification examination and administering subsequent examinations on a 3-year interval.

Paragraph (b)(2)(xix). This paragraph prohibits the use of the provisions in IWA–2240 and IWA–4520(c) which would allow alternative examination methods, a combination of methods, or newly developed techniques to be substituted for the methods specified in the Construction Code during repair and replacement activities.

Paragraph (b)(2)(xx). This paragraph supplements the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–5213(a) to require a 10-minute hold time after attaining test pressure for Class 2 and Class 3 components that are not in use during normal operating conditions, and no hold time for the remaining Class 2 and Class 3 components provided that system has been in operation for at least 4 hours for insulated components or 10 minutes for uninsulated components.

Paragraph (b)(2)(xxi)(A). This paragraph requires that licensees perform pressurizer and steam generator nozzle inside-radius inspections of Table IWB–2500–1, Examination Category B-D, Items B3.40 and B3.60 (Inspection Program A) and Items B3.120 and B3.140 (Inspection Program B) of the 1998 Edition. The 1999 Addenda and the 2000 Addenda of Section XI are not permitted to be used. A visual examination with enhanced magnification that has a resolution sensitivity to detect a 1-mil width wire or crack, using the allowable flaw length criteria in Table IWB–3512–1, may be performed in place of a UT examination.

Paragraph (b)(2)(xxi)(B). This paragraph requires that the CRD bolting examinations of Table IWB–2500–1, Examination Category B-G–2, Item

B7.80, of the 1995 Addenda of Section XI be retained only for used CRD bolting in ISI programs when using the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Section XI.

Paragraph (b)(2)(xxi)(C). This paragraph requires that the attachment weld single-side volumetric examination of Table IWB–2500–1, Examination Category B–K, Item B10.10, of the 1995 Addenda of Section XI be retained in ISI programs when using the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Section XI.

Paragraph (b)(3). This paragraph incorporates by reference the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of the ASME OM Code. Licensees of nuclear power plants are required to use the 1998 Edition up to and including the 2000 Addenda when updating their inservice testing programs in their subsequent 120-month inspection interval under § 50.55a(f)(4)(ii).

Paragraph (b)(3)(ii). This paragraph extends the applicability of the existing regulations on MOV test requirements to the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of the ASME OM Code. Licensees using this edition and these addenda are required to establish a program to ensure that MOVs continue to be capable of performing their design basis safety functions. This paragraph clarifies that licensees must comply with the provisions of the ASME OM ISTC Code for testing MOVs, and reconciles the different subsection and paragraph numbers of the ASME OM Code that were renumbered in the 1998 Edition and subsequent editions and addenda.

Paragraph (b)(3)(iii). This paragraph extends the applicability of the existing regulation that permits the use of Code Case OMN–1 in place of stroke time test requirements to the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of the ASME OM Code, and reconciles those subsections of the ASME OM Code that were renumbered in the 1998 Edition. The modification continues to allow, as a voluntary alternative, the use of Code Case OMN–1 in place of the stroke-time testing requirements of paragraph (b)(3)(ii) when using this edition and these addenda.

Paragraph (b)(3)(iv). This paragraph extends the applicability of the existing regulations in paragraphs (b)(3)(iv)(A), (B), and (C) on check valve condition monitoring requirements to the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of the ASME OM Code. There are no substantive changes in the requirements. This paragraph also reconciles the different subsection and paragraph numbers of the ASME OM Code that were renumbered in the 1998 Edition and subsequent editions and addenda.

Paragraph (b)(3)(iv)(D). There are no substantive changes to the check valve condition monitoring requirements in ASME OM Code in this paragraph. This paragraph reconciles the different subsection and paragraph numbers of that were renumbered in the 1998 Edition and subsequent editions and addenda.

Paragraph (b)(3)(v). This paragraph extends the applicability of the existing snubber ISI requirements to the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of the ASME OM Code.

Paragraph (b)(3)(vi). This paragraph requires that manual valves within the scope of the ASME OM Code be exercised on a 2-year interval rather than the 5-year interval specified in the 1999 Addenda and 2000 Addenda of the ASME OM Code, provided that adverse conditions do not require more frequent testing. Paragraph ISTC–3540 of the ASME OM Code describes adverse conditions as harsh service environment, lubricant hardening, corrosive or sediment-laden process fluid, or degraded valve components.

Paragraph (g)(6)(ii)(B). The paragraph removes the containment examination requirements in §§ 50.55a(g)(6)(ii)(B)(*1*) through (*4*) because the implementation dates have expired and all licensees have completed the requirements (or a delay has been approved by an exemption); and redesignates the existing § 50.55a(g)(6)(ii)(B)(*5*) as § 50.55a(g)(6)(ii)(B). Licensees do not have to submit to the NRC staff for approval of their containment inservice inspection programs which were developed to satisfy the requirements of Subsection IWE and Subsection IWL with specified modifications and limitations. The program elements and the required documentation must be maintained on site for audit.

Paragraph (g)(6)(ii)(C)(1). This paragraph clarifies that Appendix VIII to Section XI, 1995 Edition with the 1996 Addenda, as well as its supplements, must be implemented. Supplements 12 and 13 of Appendix VIII are eliminated from the implementation schedule.

Paragraph (g)(6)(ii)(C)(2). This paragraph clarifies the requirements of Appendix VIII and the supplements to Appendix VIII to Section XI. Licensees implementing the 1989 Edition and earlier editions and addenda of IWA–22323 of Section XI must implement the 1995 Edition with the 1996 Addenda of Appendix VIII of Section XI.

4. Generic Aging Lessons Learned Report

In July 2001, the NRC issued, ''Generic Aging Lessons Learned (GALL) Report,'' NUREG–1801, Volumes 1 and 2, for use by applicants in preparing their license renewal applications. The GALL report evaluates existing generic programs, documents the basis for determining when generic existing programs are adequate without change, and documents when generic existing programs should be augmented for license renewal. Section XI, Division 1, of the ASME BPV Code is one of the generic existing programs in the GALL report that is evaluated as an aging management program (AMP) for license renewal. Subsections IWB, IWC, IWD, IWF, IWE, and IWL of the 1995 Edition up to and including the 1996 Addenda of Section XI of the ASME BPV for ISI were evaluated in the GALL report and the conclusions in the GALL report are valid for these edition and addenda.

In the GALL report Sections XI.M1, ''ASME Section XI Inservice Inspection, Subsections IWB, IWC, and IWD,'' XI.S1, ''ASME Section XI, Subsection IWE,'' XI.S2, ''ASME Section XI, Subsection IWL,'' and XI.S3, ''ASME Section XI, Subsection IWF,'' describe the evaluation and technical basis for determining the adequacy of Subsections IWB, IWC, IWD, IWE, IWL, and IWF, respectively. In addition, many other AMPs in the GALL report rely in part, but to a lesser degree, on the requirements in the ASME Code, Section XI (*i.e.*, XI.M3, XI.M4, XI.M5, XI.M6, XI.M7, XI.M8, XI.M9, XI.M11, XI.M12, XI.M13, XI.M14, XI.M15, XI.M16, XI.M18. XI.M24, XI.M25, and XI.M32). These AMPs were evaluated for 10 specific elements with such attributes as scope of program, preventive actions, parameters monitored/inspected, detection of aging effects, monitoring and trending, acceptance criteria, corrective actions, confirmation process, administrative controls, and operating experience. If an applicant takes credit for a program in GALL, it is incumbent on the applicant to ensure that the plant program contains all the elements of the referenced GALL program. The GALL report contains one acceptable way to manage aging effects for license renewal. An applicant may propose alternatives for NRC review in its plant-specific license renewal application.

The NRC has completed an evaluation of Subsections IWB, IWC, IWD, IWE, IWF, and IWL of Section XI of the ASME BPV Code (1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda) as part of the § 50.55a

amendment process to ensure that the conclusions of the GALL report remain valid. Although some of the revisions in Section XI of the ASME BPV Code relax the provisions of the 1995 Edition with the 1996 Addenda, the revisions are acceptable (except as discussed below) and the conclusions of the GALL report remain valid. Accordingly, an applicant may use Subsections IWB, IWC, IWD, IWE, IWF, and IWL of Section XI of the ASME BPV Code (1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda) as acceptable alternatives to the requirements of the 1995 Edition up to and including the 1996 Addenda of the ASME Code, Section XI, referenced in the GALL AMPs without the need to submit these alternatives for NRC review in its plant-specific license renewal application. Similarly, a licensee approved for license renewal that relied on the GALL AMPs may use Subsections IWB, IWC, IWD, IWE, IWF, and IWL of Section XI of the ASME BPV Code (1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda) as acceptable alternatives to the AMPs described in the GALL report.

Several of the revisions to Subsections IWB, IWE, and IWL that are discussed in the preceding Section 2, Public Comments on Proposed Rule; and Final Rule, might affect the validity of the conclusions in the GALL report because provisions in the 1995 Edition up to and including the 1996 Addenda that address examination requirements and acceptance standards have been relaxed or eliminated in the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda. The new limitations and modifications in § 50.55a(b) require that the revised provisions be supplemented with additional inspection requirements as a condition for their use. The conclusions of the GALL report remain valid for the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Section XI of the ASME BPV Code with the use of these new limitations and modifications as discussed in this final rulemaking. However, it should be noted that the NRC is imposing these limitations and modifications to ensure consistency and an acceptable level of safety in the examination requirements and acceptance standards, and not solely to validate the conclusions in the GALL report.

The GALL report identified areas of the 1995 Edition with the 1996 Addenda of Section XI of the ASME Code that require augmentation for license renewal. A license renewal applicant may either augment their AMPS in these areas as described in the GALL report, or propose alternatives for NRC review in its plant-specific license renewal application. The GALL report's conclusions with respect to augmentation in connection with a license renewal application also apply when implementing the 1998 Edition, 1999 Addenda, and 2000 Addenda of Section XI of the ASME Code.

5. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland.

Rulemaking Website (Web). The NRC's interactive rulemaking Website is located at *http://ruleforum.llnl.gov.* These documents may be viewed and downloaded electronically via this Website.

NRC's Public Electronic Reading Room (PERR). The NRC's public electronic reading room is located at *http://www.nrc.gov/reading-rm/adams.html.*

NRC Staff Contact. Single copies of the **Federal Register** Notice, Regulatory Analysis, Environmental Assessment, and Resolution of Public Comments be obtained from Stephen Tingen, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Alternatively, you may contact Mr. Tingen at (301) 415–1280, or via e-mail at: *sgt@nrc.gov.*

Document	PDR	Web	PERR	NRC staff
Federal Register Notice	X	X		X
Regulatory Analysis	X	X	ML 022130308	X
Environmental Assessment	X	X	ML 022130316	X
Resolution of Public Comments	X	X	ML 022130320	X
Public Comments	X	X	ML 021480072	X

6. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending its regulations to incorporate by reference a later edition and addenda of Sections III and XI of the ASME BPV Code and the ASME OM Code, for construction, ISI, and IST of nuclear power plant components, as identified in the preceding Section 2, Public Comments on Proposed Rule; and Final Rule.

A number of commenters stated that the NRC approval of the ASME Code with exceptions (*i.e.*, modifications and limitations) does not meet the spirit of Pub. L. 104–113. The NRC disagrees because although Pub. L. 104–113 requires Federal agencies to use industry consensus standards to the extent practical, it does not require Federal agencies to endorse a standard in its entirety, nor does it forbid Federal agencies from endorsing industry consensus standards with limitations or modifications. The law does not prohibit an agency from generally adopting a voluntary consensus standard while taking exception to specific portions of the standard if those provisions are deemed to be ''inconsistent with applicable law or otherwise impractical.'' Furthermore, taking specific exceptions furthers the Congressional intent of Federal reliance on voluntary consensus standards because it allows the adoption of substantial portions of consensus standards without the need to reject the standards in their entirety because of limited provisions which are not acceptable to the agency. Moreover, there is no legislative history suggesting that Congress intended agencies to take an ''all or nothing'' approach to endorsement of voluntary consensus standards under the Act, and the OMB guidance implementing Pub. L. 104–113 does not address the matter. The discussion in the statement of considerations of the limitations and modifications is sufficient to satisfy the requirements of Section 12(d)(3) of Pub. L. 104–113, and the relevant requirements of OMB Circular A–119 (1998). In light of these factors, the NRC concludes that the explanations for the modifications and limitations to the ASME BPV and OM Codes, as set forth

in the statement of considerations for this final rule, satisfy the requirements of Section 12(d)(3) of Pub. L. 104–113, and OMB Circular A–119.

7. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment, and, therefore, an environmental impact statement is not required.

This rulemaking will not significantly increase the probability or consequences of accidents; no changes are being made in the types of any effluents that may be released off-site; the environmental assessment for this rule demonstrates that there is a small decrease in occupational exposure; and there is no significant increase in public radiation exposure. Therefore, there are no significant radiological impacts associated with the action. The rulemaking does not involve non-radiological plant effluents and has no other environmental impact. Therefore, no significant non-radiological impacts are associated with the action.

The determination for this rule is that there will be no significant off-site impact to the public from this action. The NRC has prepared an environmental assessment on this final rule. The environmental assessment is available as indicated in Section 5, Availability of Documents, under the Supplementary Information heading.

The NRC requested the views of the States on the environmental assessment for the rule and did not receive any comments from the States.

8. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Because the rule will reduce existing information collection requirements, the public burden for these information collections is expected to be decreased by 14 hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for further 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 to *infocollects@nrc.gov*; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0011), Office of Management and Budget, Washington, DC 20503.

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

9. Regulatory Analysis

The NRC has prepared a regulatory analysis on this final rule. The analysis examines the costs and benefits of the action considered by the Commission. The regulatory analysis is available as indicated in Section 5, Availability of Documents, under the Supplementary Information heading.

One commenter stated that the regulatory analysis for the proposed amendment failed to address the values and impacts associated with a number of the modifications and limitations in the proposed rule. The NRC notes that the purpose of the regulatory analysis is to identify any significant values and impact associated with updating from the 1995 Edition with the 1996 Addenda to the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of the ASME Code. Therefore, modifications and limitations that require licensees to use the existing Code provisions in the 1995 Edition with the 1996 Addenda of the ASME Code are not addressed in the regulatory analysis.

10. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants. The 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 size standards established by the NRC (10 CFR 2.810).

11. Backfit Analysis

The NRC's Backfit Rule in 10 CFR 50.109 states that the Commission shall require the backfitting of a facility only when it finds the action to be justified under specific standards stated in the rule. Section 50.109(a)(1) defines backfitting as the modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position after issuance of the construction permit or the operating license or the design approval.

Section 50.55a requires nuclear power plant licensees to construct ASME Boiler and Pressure Vessel Code (BPV Code) Class 1, 2, and 3 components in accordance with the rules provided in Section III, Division 1, of the ASME BPV Code; inspect Class 1, 2, 3, Class MC, and Class CC components in accordance with the rules provided in Section XI, Division 1, of the ASME BPV Code; and test Class 1, 2, and 3 pumps and valves in accordance with the rules provided in the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code). This final rule incorporates by reference the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Section III, Division 1, of the ASME BPV Code; Section XI, Division 1, of the ASME BPV Code; and the ASME OM Code.

Incorporation by reference of later editions and addenda of Section III, Division 1, of the ASME BPV Code is prospective in nature. The later editions and addenda do not affect a plant that has received a construction permit or an operating license or a design that has been approved, because the edition and addenda to be used in constructing a plant are, by rule, determined on the basis of the date of the construction permit, and are not changed thereafter, except voluntarily by the licensee. Thus, incorporation by reference of a later edition and addenda of Section III, Division 1, does not constitute a ''backfitting'' as defined in § 50.109(a)(1).

Incorporation by reference of later editions and addenda of Section XI, Division 1, of the ASME BPV Code and the ASME OM Code affect the ISI and IST programs of operating reactors. However, the Backfit Rule generally does not apply to incorporation by reference of later editions and addenda of the ASME BPV (Section XI) and OM Codes for the following reasons—

(1) The NRC's longstanding policy has been to incorporate later versions of the

ASME Codes into its regulations. This is codified in § 50.55a which requires licensees to revise their ISI and IST programs every 120 months to the latest edition and addenda of Section XI of the ASME BPV Code and the ASME OM Code incorporated by reference into § 50.55a that is in effect 12 months prior to the start of a new 120-month ISI and IST interval. Thus, when the NRC endorses a later version of the Code, it is implementing this longstanding policy and requirement.

(2) ASME BPV and OM Codes are national consensus standards developed by participants with broad and varied interests, in which all interested parties (including the NRC and utilities) participate. This consideration is consistent with both the intent and spirit of the Backfit Rule (i.e., the NRC provides for the protection of the public health and safety, and does not unilaterally imposed undue burden on applicants or licensees).

Other circumstances where the NRC does not apply the Backfit Rule to the endorsement of a later Code are as follows—

(1) When the NRC takes exception to a later ASME BPV or OM Code provision, but merely retains the current existing requirement, prohibits the use of the use of the later Code provision, or limits the use of the later Code provision, the Backfit Rule does not apply because the NRC is not imposing new requirements. However, the NRC explains any such exceptions to the Code in the Statement of Considerations for the rule. Sections 50.55a(b)(2)(viii)(F), (b)(2)(ix)(F), (b)(2)(ix)(G), (b)(2)(ix)(H), (b)(2)(xviii)(A), (B) and (C), (b)(2)(xix), (b)(2)(xxi)(A) and (C) in this final rule either retain current existing requirements, prohibit the use of the later Code provision, or limit the use of the later Code provision.

(2) When an NRC exception relaxes an existing ASME BPV or OM Code provision but does not prohibit a licensee from using the existing Code provision. Section 50.55a(b)(3)(vi) in this final rule relaxes the use of an existing Code provision but does not prohibit a licensee from using the existing Code provision.

There are some circumstances where the NRC considers it appropriate to treat as a backfit the endorsement of a later ASME BPV or OM Code—

(1) When the NRC endorses a later provision of the ASME BPV or OM Code that takes a substantially different direction from the currently existing requirements, the action is treated as a backfit. An example was the NRC's initial endorsement of Subsections IWE and IWL of Section XI, which imposed containment inspection requirements on operating reactors for the first time. The final rule dated August 8, 1996 (61 FR 41303), incorporated by reference in § 50.55a the 1992 Edition with the 1992 Addenda of IWE and IWL of Section XI to require that containments be routinely inspected to detect defects that could compromise a containment's structural integrity. This action expanded the scope of § 50.55a to include components that were not considered by the existing regulations to be within the scope of ISI. Since those requirements involved a substantially different direction, they were treated as backfits, and justified in accordance with the standards of 10 CFR 50.109. There are no provisions similar to this in the final rule.

(2) When the NRC requires implementation of later ASME BPV or OM Code provision on an expedited basis, the action is treated as a backfit. This applies when implementation is required sooner than it would be required if the NRC simply endorsed the Code without any expedited language. An example was the final rule dated September 22, 1999 (64 FR 51370), which incorporated by reference the 1989 Addenda through the 1996 Addenda of Section III and Section XI of the ASME BPV Code, and the 1995 Edition with the 1996 Addenda of the ASME OM Code. The final rule expedited the implementation of the 1995 Edition with the 1996 Addenda of Appendix VIII of Section XI of the ASME BPV Code for qualification of personnel and procedures for performing UT examinations. The expedited implementation of Appendix VIII was considered a backfit because licensees were required to implement the new requirements in Appendix VIII prior to the next 120-month ISI program inspection interval update. Another example was the final rule dated August 6, 1992 (57 FR 34666), which incorporated by reference in § 50.55a the 1986 Addenda through the 1989 Edition of Section III and Section XI of the ASME BPV Code. The final rule added a requirement to expedite the implementation of the revised reactor vessel shell weld examinations in the 1989 Edition of Section XI. Imposing these examinations was considered a backfit because licensees were required to implement the examinations prior to the next 120-month ISI program inspection interval update. There are no provisions similar to this in the final rule.

(3) When the NRC takes an exception to a ASME BPV or OM Code provision and imposes a requirement that is substantially different from the current existing requirement as well as substantially different than the later Code.

In §§ 50.55a(b)(2)(xv)(A), (A)(*1*) and (A)(*2*) that are discussed in the preceding Section 2, Final Rule and Comments on Proposed Rule, the NRC is adopting dissimilar metal piping weld ultrasonic (UT) examination coverage requirements. The NRC concludes that the addition of dissimilar metal piping weld UT examination coverage requirements to the regulation is necessary to correct the omission by the ASME BPV Code to ensure adequate protection of public health and safety. This backfit falls into the ''adequate protection'' exception under 10 CFR 50.109(a)(4)(ii), and the documented evaluation required by 10 CFR 50.109(a)(6) is below. Therefore, a backfit analysis under 10 CFR 50.109(a)(3) is not required.

Documented Evaluation

Dissimilar metal piping weld examination coverage requirements, although contained in the 1989 Edition, and earlier editions and addenda of Appendix III of Section XI of the ASME BPV Code, are not addressed in later editions and addenda of Section XI. Appendix VIII was added in the 1989 Addenda of Section XI, and the UT examination criteria for piping welds in Appendix VIII supercede the examination criteria for piping welds in Appendix III. Although Appendix VIII addresses qualification of personnel, procedures, and equipment used to conduct UT examinations of dissimilar metal piping welds, Appendix VIII (unlike Appendix III) does not define UT examination coverage criteria for dissimilar metal piping welds. Therefore, the addition of dissimilar metal piping weld examination coverage requirements to the regulation is necessary to correct the omission by the ASME BPV Code.

The purpose of ISI is to monitor for degrading conditions and ensure that any flaws which develop during service can be detected, sized, and evaluated, and that components with unacceptable flaws are repaired or replaced to adequately maintain the integrity of the pressure boundary. Another purpose of ISI is to identify any possible generic-type defects that were unforeseen during the design stage so that corrective actions can be taken prior to a breach of the pressure boundary. Although plants have generally been designed with sufficient margin so that important components will not crack or undergo excessive degradation, uncertainties in the definition of

service-induced loads and operating environments may have led to a less than optimum choice of materials, and may have permitted degradation mechanisms to progress more rapidly, or allowed different mechanisms to be active during plant operation, than were foreseen in the design.

Section XI defines inspection criteria for ISI and indicates allowable flaw sizes (with margin) based on fracture mechanics for various locations within reactor coolant pressure boundary (RCPB) components. If a flaw is found that exceeds the allowable size, (1) the component must be repaired, or (2) a safety analysis must be conducted, using fracture mechanics, to show that the flaw will not grow to an extent that could impair the integrity of the component. To conduct reliable and credible safety evaluations using fracture mechanics, information from the UT examination is required regarding the flaw size, shape, orientation, and location within the component. Consequently, examination information is key to detecting flaws and assessing the continued reliability and safety of flawed RCPB components.

Dissimilar metal welds are used to connect RCPB components. Operating history shows serious degradation of RCPB dissimilar metal welds have occurred at several nuclear power plants in the United States and at one foreign nuclear power plant. The NRC believes that additional occurrences are possible. Therefore, comprehensive and technically sound UT examination coverage criteria for dissimilar metal piping welds are needed to ensure that each facility provides adequate protection to the health and safety of the public. Sections 50.55a(b)(2)(xv)(A), (A)(*1*) and (A)(*2*) impose requirements that define comprehensive and technically sound UT examination coverage criteria for dissimilar metal piping welds that ensure uniform examination results among all licensees. These UT examination coverage requirements are necessary to detect flaws in dissimilar metal welds in RCPB components, thereby maintaining an extremely low probability of abnormal leakage or rapidly propagating failure, and gross rupture.

The remaining portion of this section addresses public comments related to backfitting or backfit issues on the proposed rule.

A number of commenters raised a generic concern with regard to the NRC's position on imposing exceptions (*i.e.*, modification or limitation) to consensus standards that are incorporated by reference in the Code of Federal Regulations. The commenters believe that, contrary to the NRC's determination, imposing any modification or limitation to the ASME Code constitutes a backfit for which a backfit analysis is required. Commenters stated that NRC is required to demonstrate that modifications and limitations result in an increase in quality or safety.

The NRC has reviewed the comments and has concluded that the commenters do not raise concerns which would alter the previous conclusion that the Backfit Rule does not require a backfit analysis of the modifications and limitations imposed by the NRC in the final rule. Furthermore, many of the modifications and limitations imposed during previous routine updates of § 50.55a have established a precedence for determining which modifications or limitations are backfits or require a backfit analysis (final rules dated August 6, 1992 (57 FR 34666), August 8, 1996 (61 FR 41303), and September 22, 1999 (64 FR 51370)). The NRC finds that the application of the backfit requirements to modifications and limitations in the current rule are consistent with the application of backfit requirements to modifications and limitations in previous rules. Since the modification and limitations in the current rule are not considered backfits or do not require backfit analyses, the NRC is not required to demonstrate that the new modifications and limitations result in an increase in quality or safety.

Section 50.55a(b)(2)(ix)(F) of the proposed rule would require that personnel who conduct visual examinations of containment surfaces be qualified in accordance with the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–2300 in place of the ''owner-defined'' qualification provisions in the 1998 Edition, 1999 Addenda, and 2000 Addenda IWE–2330(a). One commenter stated that the NRC is imposing additional qualification requirements for personnel that conduct general visual examinations in accordance with the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWE that were not imposed on general visual examinations conducted in accordance with earlier editions and addenda of IWE.

The NRC agrees with the commenter. The NRC proposed additional qualification requirements for personnel that conduct general visual examinations. Editions and addenda of IWE earlier than the 1998 Edition required the use of the VT–1 visual inspection method, the VT–3 visual inspection method, and a general visual inspection. The provisions in IWA–2300 were used to define the qualification requirements for personnel that conduct VT–1 and VT–3 visual examinations; however, detailed qualification requirements were not provided in the ASME Code for personnel that conduct general visual examinations. There are significant changes in the visual examination requirements in the 1998 Edition of IWE. Paragraph IWE–2330(a) requires that the licensee define the qualification requirements for personnel that conduct all visual examinations of containment surfaces, and a number of visual examinations are recategorized as general visual examinations that were formerly categorized as VT–1 or VT–3 in earlier editions and addenda of IWE. The intent of § 50.55a(b)(2)(ix)(F) in the proposed rule was not to allow licensees to use ''owner-defined'' qualification requirements to qualify personnel that conduct examinations that were formerly categorized as VT–1 or VT–3. However, the NRC inadvertently worded the modification such that additional qualification requirements would also be imposed on personnel that conduct general visual examinations. Therefore, the qualification requirements for personnel that conduct visual inspections of containment surfaces are revised in the final rule to require that personnel who conduct VT–1 and VT–3 visual examinations of containment surfaces be qualified in accordance with the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–2300.

Section 50.55a(b)(2)(ix)(G) in the proposed rule would require that the general visual examinations required by the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWE–2310(b) and IWE–2310(c) meet VT–3 examination method provisions in the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWA–2210 in place of the ''owner-defined'' general and detailed visual examination provisions in the 1998 Edition, 1999 Addenda, and 2000 Addenda of IWE–2310(a).

One commenter stated that it is inappropriate for the NRC to impose § 50.55a(b)(2)(ix)(G) without performing a backfit analysis because the modification increases the frequency of VT–3 examinations of containment surfaces beyond that which was previously required in the editions and addenda of IWE earlier than the 1998 Edition. The commenter is correct. It was not the intent of the NRC to increase the frequency of VT–3 visual examinations of containment surfaces. The NRC inadvertently worded the modification such that the frequency of VT–3 examinations of containment areas was increased. Therefore, § 50.55a(b)(2)(ix)(G) is revised in the

final rule to require that VT–3 visual examinations for certain containment areas be performed once during each 10-year inspection interval which is consistent with the provisions in the editions and addenda of IWE earlier than the 1998 Edition.

Sections 50.55a(b)(2)(ix)(J), (b)(2)(xx), and (b)(2)(xxi)(B) in the proposed rule involve provisions in Section XI that were deleted in the 1995 Addenda that the NRC is reinstating in the final rule (§ 50.55a(b)(2)(ix)(J) of the proposed rule is renumbered as § 50.55a(b)(2)(ix)(I) in the final rule). Section 50.55a(b)(2)(xxiii) of the proposed rule involves underwater welding provisions in Section XI that were added in the 1996 Addenda that the NRC is prohibiting the use of in the final rule (§ 50.55a(b)(2)(xxiii) of the proposed rule is renumbered as § 50.55a(b)(2)(xii) in the final rule).

Several commenters stated that it is inappropriate for the NRC to reinstate or prohibit the use of these Code provisions because the elimination or addition of these Code provisions was previously accepted by the NRC the final rule dated September 22, 1999 (64 FR 51370). The NRC disagrees. These modifications were not included in the final rule that incorporated by reference the 1995 Addenda and 1996 Addenda of Section XI in 10 CFR 50.55a (64 FR 51370) due to an oversight by the NRC. The NRC did not identify that these Code provisions were eliminated or added when it reviewed the 1995 Addenda and 1996 Addenda of Section XI. The NRC has determined that these modifications should only apply to those licensees who implement the 1997 Addenda and later editions and addenda of Section XI, and should not be backfit to those licensees who update their ISI programs to the 1995 Edition with the 1996 Addenda in accordance with 10 CFR 50.55a(g)(4)(ii). The NRC has determined it is acceptable not to backfit the licensees who update their ISI programs to the 1995 Edition with the 1996 Addenda, because those licensees will be required at the next 10-year interval to update their ISI programs to include or prohibit the relevant Code provisions. Thus, any problems would be caught during the next 10-year interval. The reinstatement or prohibition of the relevant Code provisions are not considered backfits, because they are imposed only as part of the routine updating required as part of the 120-month updating, and do not constitute a significant change to, or fundamental modification of the existing ISI program.

Section 50.55a(b)(3)(vi) in the proposed rule would prohibit the extension of the exercise interval for manual valves from 3 months to 5 years when using the 1999 Addenda and 2000 Addenda of ISTC–3540. One commenter stated that the NRC should delete § 50.55a(b)(3)(vi) or conduct a backfitting analysis justifying the imposition of the proposed modification.

The NRC disagrees that a backfit analysis is required for § 50.55a(b)(3)(vi). The intent of the ASME consensus process was to extend the exercise interval for manual valves, and in this case, the NRC is accommodating the ASME consensus process to the extent that the NRC believes the extended exercise interval can be justified (*i.e.*, 2 years). In this case the NRC is allowing a relaxation from the current requirements, but not as much of a relaxation as the later Code would allow. Licensees are free to continue to implement the existing requirement (e.g., testing every three months).

The proposed rule would add a new § 50.55a(g)(6)(ii)(B)(*1*) to clarify the start date of the first 120-month interval for the ISI of Class MC and Class CC components. One commenter noted that since licensees have already established the start date of the first 120-month interval for the ISI of Class MC and Class CC components, it is a backfit for the NRC to now impose a different start date than that already established by licensees. The NRC agrees with this comment. Therefore, § 50.55a(g)(6)(ii)(B)(*1*) in the proposed rule is not adopted.

12. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

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. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.55a is amended by:

(a) removing paragraphs (b)(2)(xv)(G)(*4*), (g)(6)(ii)(B)(*1*) through (g)(6)(ii)(B)(*4*);

(b) redesignating and revising paragraph (g)(6)(ii)(B)(*5*) as (g)(6)(ii)(B);

(c) revising the introductory text of paragraph (b)(1), paragraphs (b)(1)(ii), (b)(1)(iii) and (b)(1)(v), the introductory text of paragraph (b)(2), paragraph (b)(2)(vi), the introductory text of paragraphs (b)(2)(viii) and (b)(2)(ix), paragraphs (b)(2)(xi), and (b)(2)(xiv), the introductory text of paragraph (b)(2)(xv), paragraphs (b)(2)(xv)(A), (b)(2)(xv)(K)(*1*)(*i*) and (b)(2)(xvii), the introductory text of paragraph (b)(3), paragraph (b)(3)(ii), the introductory text of paragraphs (b)(3)(iii) and (b)(3)(iv), and paragraphs (b)(3)(v) and (g)(6)(ii)(C)(*1*); and

(d) adding paragraphs (b)(2)(viii)(F), (b)(2)(ix)(F) through (b)(2)(ix)(I), (b)(2)(xii), (b)(2)(xv)(M), (b)(2)(xviii) through (b)(2)(xxi), (b)(3)(iv)(D), (b)(3)(vi), and (g)(6)(ii)(C)(*2*).

The amended text is set forth to read as follows:

§ 50.55a Codes and standards.

* * * * *

(b) * * *

(1) As used in this section, references to Section III of the ASME Boiler and Pressure Vessel Code refer to Section III, and include the 1963 Edition through

1973 Winter Addenda, and the 1974 Edition (Division 1) through the 2000 Addenda (Division 1), subject to the following limitations and modifications:

* * * * *

(ii) *Weld leg dimensions.* When applying the 1989 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(1) of this section, licensees may not apply paragraph NB–3683.4(c)(1), Footnote 11 to Figure NC–3673.2(b)–1, and Figure ND–3673.2(b)–1.

(iii) *Seismic design.* Licensees may use Articles NB–3200, NB–3600, NC–3600, and ND–3600 up to and including the 1993 Addenda, subject to the limitation specified in paragraph (b)(1)(ii) of this section. Licensees may not use these Articles in the 1994 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(1) of this section.

* * * * *

(v) *Independence of inspection.* Licensees may not apply NCA–4134.10(a) of Section III, 1995 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(1) of this section.

(2) As used in this section, references to Section XI of the ASME Boiler and Pressure Vessel Code refer to Section XI, and include the 1970 Edition through the 1976 Winter Addenda, and the 1977 Edition (Division 1) through the 2000 Addenda (Division 1), subject to the following limitations and modifications:

* * * * *

(vi) *Effective edition and addenda of Subsection IWE and Subsection IWL, Section XI.* Licensees may use either the 1992 Edition with the 1992 Addenda or the 1995 Edition with the 1996 Addenda of Subsection IWE and Subsection IWL as modified and supplemented by the requirements in paragraphs (b)(2)(viii) and (b)(2)(ix) of this section when implementing the initial 120-month inspection interval for the containment inservice inspection requirements of this section. Successive 120-month interval updates must be implemented in accordance with paragraph (g)(4)(ii) of this section.

* * * * *

(viii) *Examination of concrete containments.* Licensees applying Subsection IWL, 1992 Edition with the 1992 Addenda, shall apply paragraphs (b)(2)(viii)(A) through (b)(2)(viii)(E) of this section. Licensees applying the 1995 Edition with the 1996 Addenda shall apply paragraphs (b)(2)(viii)(A), (b)(2)(viii)(D)(*3*), and (b)(2)(viii)(E) of this section. Licensees applying the 1998 Edition with the 1999 and 2000 Addenda shall apply paragraphs (b)(2)(viii)(E) and (b)(2)(viii)(F) of this section.

* * * * *

(F) Personnel that examine containment concrete surfaces and tendon hardware, wires, or strands must meet the qualification provisions in IWA–2300. The ''owner-defined'' personnel qualification provisions in IWL–2310(d) are not approved for use.

(ix) *Examination of metal containments and the liners of concrete containments.* Licensees applying Subsection IWE, 1992 Edition with the 1992 Addenda, or the 1995 Edition with the 1996 Addenda, shall satisfy the requirements of paragraphs (b)(2)(ix)(A) through (b)(2)(ix)(E) of this section. Licensees applying the 1998 Edition with the 1999 Addenda and 2000 Addenda shall satisfy the requirements of paragraphs (b)(2)(ix)(A), (b)(2)(ix)(B), and (b)(2)(ix)(F) through (b)(2)(ix)(I) of this section.

* * * * *

(F) VT–1 and VT–3 examinations must be conducted in accordance with IWA–2200. Personnel conducting examinations in accordance with the VT–1 or VT–3 examination method shall be qualified in accordance with IWA–2300. The ''owner-defined'' personnel qualification provisions in IWE–2330(a) for personnel that conduct VT–1 and VT–3 examinations are not approved for use.

(G) The VT–3 examination method must be used to conduct the examinations in Items E1.12 and E1.20 of Table IWE–2500–1, and the VT–1 examination method must be used to conduct the examination in Item E4.11 of Table IWE–2500–1. An examination of the pressure-retaining bolted connections in Item E1.11 of Table IWE–2500–1 using the VT–3 examination method must be conducted once each interval. The ''owner-defined'' visual examination provisions in IWE–2310(a) are not approved for use for VT–1 and VT–3 examinations.

(H) Containment bolted connections that are disassembled during the scheduled performance of the examinations in Item E1.11 of Table IWE–2500–1 must be examined using the VT–3 examination method. Flaws or degradation identified during the performance of a VT–3 examination must be examined in accordance with the VT–1 examination method. The criteria in the material specification or IWB–3517.1 must be used to evaluate containment bolting flaws or degradation. As an alternative to performing VT–3 examinations of containment bolted connections that are disassembled during the scheduled performance of Item E1.11, VT–3 examinations of containment bolted connections may be conducted whenever containment bolted connections are disassembled for any reason.

(I) The ultrasonic examination acceptance standard specified in IWE–3511.3 for Class MC pressure-retaining components must also be applied to metallic liners of Class CC pressure-retaining components.

* * * * *

(xi) *Class 1 piping.* Licensees may not apply IWB–1220, ''Components Exempt from Examination,'' of Section XI, 1989 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, and shall apply IWB–1220, 1989 Edition.

(xii) *Underwater Welding.* The provisions in IWA–4660, ''Underwater Welding,'' of Section XI, 1997 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, are not approved for use on irradiated material.

* * * * *

(xiv) *Appendix VIII personnel qualification.* All personnel qualified for performing ultrasonic examinations in accordance with Appendix VIII shall receive 8 hours of annual hands-on training on specimens that contain cracks. Licensees applying the 1999 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section may use the annual practice requirements in VII–4240 of Supplement VII of Section XI in place of the 8 hours of annual hands-on training provided that the supplemental practice is performed on material or welds that contain cracks, or by analyzing prerecorded data from material or welds that contain cracks. In either case, training must be completed no earlier than 6 months prior to performing ultrasonic examinations at a licensee's facility.

(xv) *Appendix VIII specimen set and qualification requirements.* The following provisions may be used to modify implementation of Appendix VIII of Section XI, 1995 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section. Licensees choosing to apply these provisions shall apply all of the following provisions under paragraph (b)(2)(xv) except for those in paragraph (b)(2)(xv)(F) which are optional.

(A) When applying Supplements 2, 3, and 10 to Appendix VIII, the following examination coverage criteria requirements must be used:

(*1*) Piping must be examined in two axial directions, and when examination in the circumferential direction is required, the circumferential examination must be performed in two directions, provided access is available. Dissimilar metal welds must be examined axially and circumferentially.

(*2*) Where examination from both sides is not possible, full coverage credit may be claimed from a single side for ferritic welds. Where examination from both sides is not possible on austenitic welds or dissimilar metal welds, full coverage credit from a single side may be claimed only after completing a successful single-sided Appendix VIII demonstration using flaws on the opposite side of the weld. Dissimilar metal weld qualifications must be demonstrated from the austenitic side of the weld and may be used to perform examinations from either side of the weld.

* * * * *

(K) * * *

(*1*) * * *

(*i*) For detection, a minimum of four flaws in one or more full-scale nozzle mock-ups must be added to the test set. The specimens must comply with Supplement 6, paragraph 1.1, to Appendix VIII, except for flaw locations specified in Table VIII S6–1. Flaws may be either notches, fabrication flaws or cracks. Seventy-five (75) percent of the flaws must be cracks or fabrication flaws. Flaw locations and orientations must be selected from the choices shown in paragraph (b)(2)(xv)(K)(*4*) of this section, Table VIII–S7–1—Modified, with the exception that flaws in the outer eighty-five (85) percent of the weld need not be perpendicular to the weld. There may be no more than two flaws from each category, and at least one subsurface flaw must be included.

* * * * *

(M) When implementing Supplement 12 to Appendix VIII, only the provisions related to the coordinated implementation of Supplement 3 to Supplement 2 performance demonstrations are to be applied.

* * * * *

(xvii) *Reconciliation of Quality Requirements.* When purchasing replacement items, in addition to the reconciliation provisions of IWA–4200, 1995 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, the replacement items must be purchased, to the extent necessary, in accordance with the licensee's quality assurance program description required by 10 CFR 50.34(b)(6)(ii).

(xviii) *Certification of NDE personnel.* (A) Level I and II nondestructive examination personnel shall be recertified on a 3-year interval in lieu of the 5-year interval specified in the 1997 Addenda and 1998 Edition of IWA–2314, and IWA–2314(a) and IWA–2314(b) of the 1999 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section.

(B) Paragraph IWA–2316 of the 1998 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, may only be used to qualify personnel that observe for leakage during system leakage and hydrostatic tests conducted in accordance with IWA–5211(a) and (b), 1998 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section.

(C) When qualifying visual examination personnel for VT–3 visual examinations under paragraph IWA–2317 of the 1998 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, the proficiency of the training must be demonstrated by administering an initial qualification examination and administering subsequent examinations on a 3-year interval.

(xix) *Substitution of alternative methods.* The provisions for the substitution of alternative examination methods, a combination of methods, or newly developed techniques in the 1997 Addenda of IWA–2240 must be applied. The provisions in IWA–2240, 1998 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, are not approved for use. The provisions in IWA–4520(c), 1997 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, allowing the substitution of alternative examination methods, a combination of methods, or newly developed techniques for the methods specified in the Construction Code are not approved for use.

(xx) *System leakage tests.* When performing system leakage tests in accordance IWA–5213(a), 1997 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, a 10-minute hold time after attaining test pressure is required for Class 2 and Class 3 components that are not in use during normal operating conditions, and no hold time is required for the remaining Class 2 and Class 3 components provided that the system has been in operation for at least 4 hours for insulated components or 10 minutes for uninsulated components.

(xxi) *Table IWB–2500–1 examination requirements.* (A) The provisions of Table IWB–2500–1, Examination Category B–D, Full Penetration Welded Nozzles in Vessels, Items B3.40 and B3.60 (Inspection Program A) and Items B3.120 and B3.140 (Inspection Program B) in the 1998 Edition must be applied when using the 1999 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section. A visual examination with enhanced magnification that has a resolution sensitivity to detect a 1-mil width wire or crack, utilizing the allowable flaw length criteria in Table IWB–3512–1, 1997 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, may be performed in place of an ultrasonic examination.

(B) The provisions of Table IWB–2500–1, Examination Category B–G–2, Item B7.80, that are in the 1995 Edition are applicable only to reused bolting when using the 1997 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section.

(C) The provisions of Table IWB–2500–1, Examination Category B–K, Item B10.10, of the 1995 Addenda must be applied when using the 1997 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section.

(3) As used in this section, references to the OM Code refer to the ASME Code for Operation and Maintenance of Nuclear Power Plants, and include the 1995 Edition through the 2000 Addenda subject to the following limitations and modifications:

* * * * *

(ii) *Motor-Operated Valve testing.* Licensees shall comply with the provisions for testing motor-operated valves in OM Code ISTC 4.2, 1995 Edition with the 1996 and 1997 Addenda, or ISTC–3500, 1998 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(3) of this section, and shall establish a program to ensure that motor-operated valves continue to be capable of performing their design basis safety functions.

(iii) *Code Case OMN–1.* As an alternative to paragraph (b)(3)(ii) of this section, licensees may use Code Case OMN–1, ''Alternative Rules for Preservice and Inservice Testing of Certain Electric Motor-Operated Valve Assemblies in Light Water Reactor Power Plants,'' Revision 0, in

conjunction with ISTC 4.3, 1995 Edition with the 1996 and 1997 Addenda, or ISTC–3600, 1998 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(3) of this section. Licensees choosing to apply the Code Case shall apply all of its provisions.

* * * * *

(iv) *Appendix II.* Licensees applying Appendix II, ''Check Valve Condition Monitoring Program,'' of the OM Code, 1995 Edition with the 1996 and 1997 Addenda, shall satisfy the requirements of paragraphs (b)(3)(iv)(A), (b)(3)(iv)(B), and (b)(3)(iv)(C) of this section. Licensees applying Appendix II, 1998 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(3) of this section, shall satisfy the requirements of paragraphs (b)(3)(iv)(A), (b)(3)(iv)(B), and (b)(3)(iv)(D) of this section.

* * * * *

(D) The provisions of ISTC–3510, ISTC–3520, and ISTC–3540 in addition to ISTC–5221 must be implemented if the Appendix II condition monitoring program is discontinued.

(v) *Subsection ISTD.* Article IWF–5000, ''Inservice Inspection Requirements for Snubbers,'' of the ASME BPV Code, Section XI, provides inservice inspection requirements for examinations and tests of snubbers at nuclear power plants. Licensees may use Subsection ISTD, ''Inservice Testing of Dynamic Restraints (Snubbers) in Light-Water Reactor Power Plants,'' ASME OM Code, 1995 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(3) of this section, in place of the requirements for snubbers in Section XI, IWF–5200(a) and (b) and IWF–5300(a) and (b), by making appropriate changes to their technical specifications or licensee-controlled documents. Preservice and inservice examinations must be performed using the VT–3 visual examination method described in IWA–2213.

(vi) *Exercise interval for manual valves.* Manual valves must be exercised on a 2-year interval rather that the 5-year interval specified in paragraph ISTC–3540 of the 1999 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(3) of this section, provided that adverse conditions do not require more frequent testing.

* * * * *

(g) * * *

(6) * * *

(ii) * * *

(B) Licensees do not have to submit to the NRC staff for approval of their containment inservice inspection programs which were developed to satisfy the requirements of Subsection IWE and Subsection IWL with specified modifications and limitations. The program elements and the required documentation must be maintained on site for audit.

(C) * * *

(*1*) Appendix VIII and the supplements to Appendix VIII to Section XI, Division 1, 1995 Edition with the 1996 Addenda of the ASME Boiler and Pressure Vessel Code must be implemented in accordance with the following schedule: Appendix VIII and Supplements 1, 2, 3, and 8—May 22, 2000; Supplements 4 and 6—November 22, 2000; Supplement 11—November 22, 2001; and Supplements 5, 7, and 10—November 22, 2002.

(*2*) Licensees implementing the 1989 Edition and earlier editions and addenda of IWA–2232 of Section XI, Division 1, of the ASME Boiler and Pressure Vessel Code must implement the 1995 Edition with the 1996 Addenda of Appendix VIII and the supplements to Appendix VIII of Section XI, Division 1, of the ASME Boiler and Pressure Vessel Code.

* * * * *

Dated at Rockville, Maryland this 9th day of September 2002.

For the U.S. Nuclear Regulatory Commission.

William D. Travers,

Executive Director For Operations.

[FR Doc. 02–23811 Filed 9–25–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 560, 590, and 591

[No. 2002–43]

RIN 1550–AB51

Alternative Mortgage Transaction Parity Act; Preemption

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Alternative Mortgage Transaction Parity Act (AMTPA) authorizes state chartered housing creditors to make, purchase, and enforce alternative mortgage transactions without regard to any state constitution, law, or regulation. To rely on AMTPA, certain state chartered housing creditors must comply with regulations on alternative mortgage transactions issued by the Office of Thrift Supervision (OTS). In today's rulemaking, OTS revises its rules identifying the OTS regulations that apply under AMTPA. OTS will no longer identify its regulations on prepayments and late charges for state chartered housing creditors.

OTS is also revising its limits on the amount of late charges that may be assessed on loans secured by first liens on residential manufactured homes under part 590, which addresses the preemption of state usury laws. In addition, OTS is making a minor technical change to the definition of reverse mortgage in part 591, which addresses the preemption of state due-on-sale laws.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Theresa Stark, Senior Project Manager, Compliance Policy, (202) 906–7054; Karen Osterloh, Special Counsel, Regulations and Legislation Division, (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Alternative Mortgage Transaction Parity Act Regulations (§ 560.220)

The Alternative Mortgage Transaction Parity Act (AMTPA) [1] permits state chartered housing creditors [2] to make, purchase, and enforce alternative mortgage transactions if the creditors comply with regulations governing such transactions issued by federal regulators. AMTPA applies to loans with any alternative payment features that vary from conventional fixed-rate, fixed-term mortgage loans, such as variable rates, balloon payments, or call features. It allows state chartered housing creditors to engage in alternative mortgage transactions notwithstanding ''any State constitution, law, or regulation,'' provided the transactions are made in conformity with regulations issued by one of three federal regulators.[3] Housing creditors, other than state chartered commercial banks and state chartered

[1] 12 U.S.C. 3801 *et seq.*

[2] A ''housing creditor'' is a depository institution, a lender approved by the Secretary of Housing and Urban Development for participation in certain mortgage insurance programs, ''any person who regularly makes loans, credit sales or advances secured by interests in properties referred to in [AMTPA]; or * * * any transferee of any of them.'' To qualify as a state housing creditor and take advantage of preemption, AMTPA specifically provides that the creditor must be ''licensed under applicable State law and [remain or become] subject to the applicable regulatory requirements and enforcement mechanisms provided by State law.'' 12 U.S.C. 3802(2).

[3] 12 U.S.C. 3803(c).

credit unions, that wish to make an alternative mortgage transaction under the authority of AMTPA, must comply with OTS regulations. State chartered commercial banks and state chartered credit unions must comply with regulations of the Office of the Comptroller of the Currency (OCC) and the National Credit Union Administration (NCUA), respectively.[4]

AMTPA directed the Federal Home Loan Bank Board (Bank Board), OTS's predecessor agency, OCC, and NCUA to identify, describe, and publish those portions of their regulations that are inappropriate for, and thus inapplicable to, their respective state chartered housing creditors.[5] The identified regulations are enforced by each state housing creditor's applicable state regulator.

Currently, OTS's regulation at § 560.220 identifies the following regulations as appropriate for, and applicable to, state housing creditors:

- § 560.33. This reference permits state housing creditors to impose late charges for any delinquent periodic payment and sets out certain limitations on the assessment of such late charges.
- § 560.34. This reference permits state housing creditors to impose a prepayment penalty and indicates how prepayments must be applied.
- § 560.35. This section addresses adjustments to interest rate, adjustments to the payment and loan balance, and the use of indices.
- § 560.210. This reference requires state housing creditors to provide initial disclosures and adjustment notices for variable rate transactions.

Housing creditors must comply with these requirements to obtain the benefit of AMTPA's preemption of state laws. All other OTS regulations are inappropriate and inapplicable to state housing creditors.

On April 5, 2000, OTS published an advance notice of proposed rulemaking (ANPR) entitled ''Responsible Alternative Mortgage Lending.''[6] The ANPR sought public comment on various questions in connection with a review of mortgage lending regulations, including comments on possible amendments to § 560.220.

On April 25, 2002, OTS issued a notice of proposed rulemaking (NPRM).[7] OTS proposed to delete the late charge and prepayment rules (§§ 560.33 and 560.34) from the list of regulations that apply to state housing creditors under AMTPA. OTS proposed to continue to identify the other two rules (§§ 560.35 and 560.210) as appropriate and applicable for state housing creditors.

OTS received 298 comments on the proposed rule and 293 of these commenters addressed changes to AMTPA provisions. The commenters were equally divided between support and opposition for the rule. About three-quarters of the commenters filed one of five form letters.

A. OTS Authority Under AMTPA

1. Background

Congress enacted AMTPA in 1982 to stimulate credit in an unusually high interest rate environment by encouraging variable rate mortgages and other creative financing. In hearings before the Senate in 1981, mortgage bankers testified that statutes in 26 states barred state chartered mortgage bankers and lending institutions from originating alternative mortgage loans, or imposed significantly higher restrictions on such loans than applied to federally chartered lenders operating under federal regulations.

Congress incorporated this factual background at 12 U.S.C. 3801(a). Congress found that increasingly volatile and dynamic changes in interest rates had seriously impaired the ability of housing creditors to provide consumers with fixed-term, fixed-rate credit secured by interests in real property, and that alternative mortgage transactions were essential to an adequate supply of credit. AMTPA also noted that OCC, NCUA, and OTS had recognized the importance of alternative mortgage transactions and had adopted ''regulations authorizing federally chartered depository institutions to engage in alternative mortgage financing.'' AMTPA indicated that:

> It is the purpose of this chapter to eliminate the discriminatory impact that those regulations have upon nonfederally chartered housing creditors and provide them with parity with federally chartered institutions by authorizing all housing creditors to make, purchase, and enforce alternative mortgage transactions so long as the transactions are in conformity with the regulations issued by the Federal agencies. 12 U.S.C. 3801(b).

Section 3803(a) states that state housing creditors may comply with regulations governing alternative mortgage transactions issued by NCUA, OCC, or OTS. Section 807(b) of AMTPA directs the three federal regulators to identify, describe, and publish those portions or provisions of their respective regulations that are ''inappropriate for (and thus inapplicable to)'' nonfederally chartered housing creditors.

Apart from references to federal regulations governing alternative mortgage transactions and regulations authorizing federally chartered lenders to engage in alternative mortgage transactions, neither the statute nor the legislative history details how the three federal agencies are to exercise their authority under section 807(b). For example, AMTPA and the legislative history do not reference or provide examples of specific types of regulations that the agencies should identify for state housing creditors.

As a result of this inconclusive direction, OTS and the Bank Board have wrestled with the proper scope of the identification of regulations for state housing creditors under AMTPA. At times, the agency has taken a narrow view of AMTPA and its legislative history. For example, the Bank Board initially identified as appropriate and applicable only those regulations that ''describe and define'' alternative mortgage transactions and did not identify regulations intended for the general supervision of federal savings associations. As a result, the Bank Board declined to identify rules that applied to loans generally (as distinguished from rules that bear directly on the unique features of alternative mortgage loans).[8]

In 1996, however, OTS reviewed its AMTPA authority and identified two general lending rules—the prepayment and late charge provisions at issue in this rulemaking.[9] The apparent rationale, contained in a contemporaneous legal opinion, but not in the rulemaking, was the conclusion that state housing creditors would be ''disadvantaged vis-à-vis federal thrifts'' if they were required to comply with state laws restricting prepayment penalties and late charges.[10] Even the contemporaneous legal opinion, however, conceded that the state laws on these subjects fell somewhere between laws clearly preempted by AMTPA (state laws barring variable rate mortgage loan transactions) and laws clearly not preempted (state laws governing liens and foreclosures).

NCUA and OCC regulations also reflect various interpretations of the scope of section 807(b) of AMTPA. NCUA has interpreted section 807(b) to permit the identification of all of its lending regulations as applicable to alternative mortgage transactions by state chartered credit unions. These mortgage regulations address such matters as the term of the loan;

[4] 12 U.S.C. 3803(a).

[5] Section 807(b) of Pub. L. 97–320 (1982).

[6] 65 FR 17811 (Apr. 5, 2000).

[7] 67 FR 20468 (Apr. 25, 2002).

[8] 47 FR 51732 (Nov. 17, 1982) and 48 FR 23032, 23053 (May 23, 1983).

[9] 61 FR 50951 (Sept. 30, 1996).

[10] OTS Op. Chief Counsel (Apr. 30, 1996).

requirements governing security instruments, notes, and liens; due-on-sale provisions; and assumptions. NCUA rules specifically preempt state laws addressing certain areas. 12 CFR 701.21. OCC, on the other hand, has identified as applicable for state commercial banks a narrow band of rules. These rules: define adjustable rate mortgages (ARMs); state that ARMS may be made, sold, purchased, participated in, or otherwise dealt in without regard to any state law limitation on those activities; authorize certain indices; and specifically allow prepayment fees. 12 CFR part 34, subpart B.

As these various approaches illustrate, section 807(b) is susceptible to a number of interpretations. Each of the agencies has exercised broad discretion in its identification of appropriate regulations under AMTPA and has struck a different balance depending on its applicable statutory and regulatory scheme. Under the current rules, each of the three agencies has advanced a different interpretation of its responsibilities under section 807(b) of AMTPA.

2. OTS's Approach

In the NPRM, OTS reexamined its 1996 interpretation. OTS noted that the purpose of AMTPA was to enable all housing creditors to provide credit through alternative mortgages and to preempt state laws that would prevent that type of credit. OTS found that its regulations governing adjustments to the interest rate, adjustments to the payment and loan balance, the use of indices, initial disclosures, and adjustment notices were essential or intrinsic to the ability of state housing creditors to continue to provide alternative mortgage transactions. To provide parity with federal thrifts, OTS proposed to continue to identify §§ 560.35 and 560.210 for state housing creditors.

On the other hand, OTS tentatively noted, upon further reflection, that the prepayment and late fee provisions were not essential or intrinsic to the ability to offer alternative mortgages. Rather, these regulations apply to real estate lending in general and are part of the broader regulatory scheme governing the lending operations of thrifts. OTS noted that one of the congressional findings underlying AMTPA was that the various federal regulators had adopted regulations authorizing federal institutions to offer alternative mortgages, and that the purpose of AMTPA was to eliminate the discriminatory impact of those regulations. OTS tentatively found that its regulations on prepayments and late fees were not adopted to enable federal thrifts to engage in alternative mortgage financing, but rather to permit federal thrifts to operate safely and soundly under a uniform federal scheme. *See* 12 CFR 560.2(a). Therefore, OTS tentatively concluded that these regulations did not offer a basis for claiming discriminatory treatment or were not needed to provide parity with federally chartered institutions. Accordingly, OTS tentatively concluded that there was no basis to distinguish prepayment and late charge provisions from other general lending rules and proposed to delete the two provisions from the list of identified rules for state housing creditors. As we explain in this statement of supplementary information, after reviewing the comments and further considering the issues, OTS adopts these findings and conclusions.

3. Comments on OTS's Approach

Several commenters argued that if AMTPA is to be given its proper effect, state housing creditors should be governed by the same regulations that address alternative mortgage transactions by federal savings associations. According to commenters, these rules include § 560.2(a), which states OTS's intent to occupy the entire field of lending regulation for federal savings associations in preemption of state law, and § 560.2(b), which expressly preempts state laws that address such matters as private mortgage insurance requirements, loan-to-value ratios, terms of credit, loan-related fees (including late charges and prepayment penalties), access to credit reports, disclosures, and advertising laws.

OTS has never identified its preemption rules as applicable to state housing creditors under AMTPA. While commenters argued that the failure to apply these preemptive regulations would disadvantage state housing creditors vis-à-vis federal thrifts, OTS believes that this position would lead to an inappropriate result under its regulatory framework.

To enhance safety and soundness and to enable federal savings associations to conduct their operations in accordance with best practices, OTS has occupied the entire field of lending regulation for federal thrifts and has given federal savings associations the maximum flexibility to exercise their lending powers in accordance with a uniform federal scheme. *See* 12 CFR 560.2(a). This complex uniform regulatory scheme benefits federal thrifts by preempting most state laws that otherwise would impose on federal savings associations different regulatory requirements from state-to-state. The system, however, also imposes various obligations on federal savings associations. For example, thrifts must comply with an array of regulatory limitations designed to ensure that their mortgage lending operations are conducted in a safe and sound manner. These limitations include appraisal requirements, real estate lending standards, underwriting guidelines, limits on loans to one borrower, and documentation requirements. Thrifts are also subject to regular examination, supervision, and enforcement of their lending activities.

OTS does not believe that it may impose these concomitant obligations on state housing creditors in this rulemaking given the instructions in the legislative history that it was not Congress' intent to place state housing creditors under the supervision of the federal agencies.[11] However, preemption under § 560.2, without the application of the related duties, would lead to an unreasonable regulatory result, *i.e.*, the perverse situation where state housing creditors could engage in mortgage lending—an area that is traditionally highly regulated—unfettered by most state or federal restrictions, thereby creating a regulatory vacuum. Accordingly, OTS declines to identify its preemption rules as applicable to state housing creditors.

Other general lending rules, such as §§ 560.33 and 560.34, are also a part of the broader regulatory scheme governing OTS supervision of the lending operations of federal thrifts. The states have, to a greater or lesser degree, adopted laws and regulations similarly designed to supervise the lending operations of state housing creditors. States that restrict prepayment penalties and late charges usually apply those restrictions to all real estate loans, not just to alternative mortgage transactions. As a result, the state laws in these areas are not directed at restricting alternative mortgage transactions, but in regulating mortgage transactions in general. OTS is reluctant to encroach upon this state authority, given the cited statutory direction and the statements of legislative intent.

For these reasons, OTS declines to identify its rules preempting state lending regulations or any other rule

[11] Sen. Rep. 97–463, at 55 (1982). This interpretation is also contrary to other expressions of congressional intent, which left room for state action by specifically reserving specific areas to the states. 12 U.S.C. 3802(2), for example, indicates that state housing creditors must comply with applicable state licensing requirements and must remain or become subject to the applicable regulatory requirements and enforcement mechanisms provided by state law.

that applies to real estate lending in general. Rather, OTS will identify only those regulations that OTS deems to be intrinsic to the ability to offer alternative loans.[12]

A number of commenters alleged that this interpretation of AMTPA would subject state housing creditors to state laws on prepayments and late charges while federal thrifts would remain subject to more permissive OTS regulations in these areas. As a result, these commenters argued that the proposed rule is inconsistent with the twin purposes of AMTPA—the elimination of discriminatory impact that federal regulations have on state housing creditors and the promotion of parity for state housing creditors. Specifically, commenters speculated that the proposed rule would discriminate against state housing creditors vis-à-vis federal savings associations in the following ways:

- Limit the range of products offered by state housing creditors. Some state housing creditors would no longer be able to offer lower rates to consumers who agree to take a loan with a prepayment penalty. In addition, restrictions on late charges would deny lenders flexibility in loan pricing and prohibit lenders from placing the cost of late payments on delinquent borrowers.
- Increase compliance costs, risk of document error, and litigation risk. Rather than complying with uniform OTS rules, creditors with multi-state operations would have to comply with inconsistent state and local laws.
- Reduce the ability to minimize prepayment risk. Prepayment penalties protect state housing creditors (and secondary market purchasers) from extreme changes in their portfolios.
- Reduce the value of their loans in the secondary market. Investors will be less able to protect against prepayment risk, and will incur additional due diligence costs (and risks) to review pools against widely varying state law. These costs will be passed on to state housing creditors. The secondary market also may have to create separate pools for federally chartered lenders and state chartered lenders to accommodate these differences.

Commenters also speculated that some lenders may choose not to offer alternative mortgage transactions in jurisdictions with restrictive laws, may cease all lending operations within those jurisdictions, or exit the industry entirely. This reduced competition, they argue, would reduce the availability of affordable credit to consumers contrary to the goals of AMTPA.

Contrary to commenters' speculation, historical evidence indicates that the final rule should not have a significant detrimental effect on state housing creditors' ability to compete against federal thrifts in the alternative mortgage market. State housing creditors functioned for 14 years (1982–1996) without applying OTS regulations on late charges and prepayments. While various prepayment regulations were applicable during this period, federal thrifts were relatively free to impose prepayment penalties since 1983.[13] Additionally, the regulations on late charges have not changed substantially during this period, other than to eliminate limitations on the amount of the late charge.[14] Accordingly, OTS has concluded that these provisions are not essential for parity.

OTS also notes that state housing creditors were vigorous competitors in mortgage lending throughout this time period. While relative market share in the alternative mortgage market is not available, OTS does have information regarding the relative participation in the one- to four-family mortgage market. In 1982, commercial banks and thrifts dominated this market by originating approximately 66.0 percent of one- to four-family mortgages. Mortgage companies' market share was significantly smaller at 28.9 percent of the market. By 1996, when OTS changed its AMTPA rules, these positions had reversed with mortgage companies originating 56.8 percent and commercial banks and thrifts originating 42.5 percent of all one- to four-family mortgages.[15]

Moreover, it is not clear that Congress viewed prepayment penalties and late charges as essential to parity. Neither AMTPA nor its legislative history provides any useful guidance concerning this issue. However, if Congress had viewed these provisions as essential to parity, it is unlikely that Congress would have adopted the statutory scheme found in AMTPA. As noted above, AMTPA does not place all state housing creditors within the jurisdiction of one federal regulator, but assigns state housing creditors to three federal agencies in a way that ''recogniz[es] traditional industry lines.''[16] When AMTPA was enacted, however, NCUA, OCC, and the Bank Board had different requirements regarding prepayment penalties. Congress banned federal credit unions from imposing prepayment penalties, which suggests that, at least for credit unions, Congress recognized that prepayment penalties were not essential to the ability to make, purchase, or enforce alternative mortgage transactions.[17] OCC regulations, on the other hand, permitted national banks to impose prepayment penalties on ARMs until 30 days prior to the first scheduled interest rate adjustment date.[18] Bank Board regulations permitted federal savings associations to impose prepayment penalties on alternative mortgage transactions under other limited circumstances.[19] If Congress had

[12] One commenter warned that this focus could undermine the broad preemption available for federal thrifts, *i.e.*, that state law may be preempted for federal thrifts only when preemption is ''intrinsic'' to the effectuation of a federal policy or goal. Other commenters sought assurance that the final rule would not erode or impair the scope of preemption available to, or the lending powers of, federal savings associations under the Home Owners' Loan Act (HOLA). This rule addresses OTS authority to identify rules for state housing creditors under AMTPA and has no impact on preemption available to, or the lending powers of, federal thrifts under the HOLA. The preemption principles under the HOLA are well settled. *See e.g.*, 12 CFR 545.2, 557.11, and 560.2; and OTS Op. Chief Counsel (Nov. 22, 1999).

[13] Until May 23, 1983, federal savings associations were permitted to impose prepayment penalties under limited circumstances. *See* 12 CFR 545.8–5(b) (1983) summarized below at note 19. On May 23, 1983, the Bank Board changed this rule to permit a federal savings association to impose prepayment penalties as provided in the loan contract. Penalties on loans secured by owner-occupied homes, however, were prohibited for a 90-day period following the issuance of a notice of adjustment of interest rate, payment balance, or term to maturity. 12 CFR 545.34(c) (1984). In 1993, OTS removed even these limited restrictions and allowed federal thrifts to impose prepayment penalties at any time and in any amount authorized in the loan contract for both adjustable rate and fixed rate loans. 58 FR 4308 (Jan. 14, 1993). This rule is now codified at 12 CFR 560.34 (2002).

[14] *Compare* 12 CFR 545.8–3(e) (1983) with 12 CFR 560.33 (2002).

[15] This information was obtained on the Mortgage Bankers' Association's Web site, which indicates that its source was a HUD Survey of Mortgage Lending Activity discontinued in 1998. OTS notes that at least one commenter asserts that state housing creditors now originate approximately 80 percent of all mortgages.

[16] Sen. Rep. 97–463, at 55 (1982).

[17] 12 U.S.C. 1757(5)(A)(viii) (1982).

[18] 12 CFR 29.6 (1983). Shortly after AMTPA was enacted, OCC revised this rule to permit prepayment fees without regard to the first scheduled interest rate adjustment. 48 FR 28970 (June 24, 1983).

[19] 12 CFR 545.8–5(b) (1983) provided: ''a borrower on a loan secured by a home or combination of home and business property may prepay the loan without penalty unless the loan contract expressly provides for all of the following: (1) A prepayment penalty, (2) an interest rate that, after loan closing and after any interest-rate adjustment, remains fixed for a period of at least five years, and (3) only such increases in the loan balance as result from the deferral and capitalization of interest pursuant to § 545.6–2(a)(2)(iv) of this part. The prepayment penalty for a loan secured by a home or combination of home and business property shall not be more than six months' advance interest on that part of the aggregate amount of all prepayments made on such loan in any 12-month period which exceeds 20

Continued

viewed the regulation of prepayment penalties as essential to parity, it is unlikely that Congress would have imposed a regulatory scheme that, at the time of enactment, ensured different treatment among the various state creditors.

The agencies also took different approaches to the regulation of late charges in 1982. The Bank Board limited the amount of late charges, prescribed a minimum grace period, and set other restrictions for loans made on the security of a home occupied or to be occupied by the borrower.[20] By contrast, NCUA rules on alternative mortgage lending did not specifically address late fees, although a federal credit union was permitted by statute to levy late charges in accordance with its by-laws for failure of a member to meet promptly its obligations.[21] OCC's ARM rule also did not specifically address late charges.

The federal regulators continue to have divergent policies regarding prepayment penalties and late charges under AMTPA. For example, OCC has promulgated a prepayment provision that applies only to ARM lending. This rule permits national banks to impose prepayment fees in connection with ARM loans notwithstanding contrary state laws. OCC applies this rule to state chartered commercial banks under AMTPA.[22] NCUA's statute, on the other hand, continues to bar federal credit unions from imposing prepayment fees on any loan. 12 U.S.C. 1757(5)(A)(viii). NCUA identifies its regulation implementing this ban and its regulation preempting state laws on prepayment limits for state chartered credit unions under AMTPA.[23]

OTS notes that absolute competitive equality is simply not attainable through any unilateral OTS action in this rulemaking. While commenters argued that this rule would have a detrimental impact on the ability of state housing creditors to compete, state housing creditors have had, and will continue to have, a competitive advantage over federal depository institutions in other areas. Unlike national banks, federal credit unions, and federal savings associations, state housing creditors are not required to follow federal regulations for any particular transaction. If a state housing creditor makes an alternative mortgage transaction in a state that has a more favorable regulatory environment, it may elect to ignore the federal regulations and comply with appropriate state laws. Federally chartered institutions have only one choice of law.

OTS also notes that the 1996 rulemaking may have introduced other new inequalities into the alternative mortgage market by giving state housing creditors within OTS's jurisdiction a competitive advantage over depository institution competitors. For example, these state housing creditors may have gained an edge over state credit unions using AMTPA and federal credit unions, which are precluded from imposing prepayment fees. Moreover, while the 1996 rule permitted these state housing creditors to impose prepayment penalties to the same extent as national banks and federal savings associations, these depository institutions may have been disadvantaged since they remained subject to various federal restrictions on their ability to compete freely in the alternative mortgage market.[24] These same restrictions do not apply to non-depository institution state housing creditors.

Thus, given the statutory scheme underlying AMTPA, complete competitive parity is impossible. Within this imperfect system, however, OTS has attempted to appropriately identify those regulations necessary for making alternative mortgages.

Commenters also speculated that the final rule would have a significant negative impact on the availability of affordable credit to borrowers. In AMTPA, Congress found that ''alternative mortgage transactions are essential to the provision of an adequate supply of credit secured by residential property necessary to meet the [expected] demand * * *'' 12 U.S.C. 3801(a)(2). This goal has been accomplished through AMTPA and other innovations in the mortgage market. In 1982, the mortgage industry relied on fixed-rate, fixed-term mortgage instruments that lenders, primarily depository institutions, funded through relatively short-term deposits. AMTPA addressed one side of this equation by increasing the availability of alternative mortgage transactions from state housing creditors.[25] the other side of the equation—the liquidity of the mortgage market '' has been enhanced through the government sponsored entities that fostered the creation of government-guaranteed mortgage-backed securities and through the emergence of private mortgage-backed securitization channels. Widespread securitization began in the 1980's and lenders now routinely originate loans for sale in the secondary market. The constant flow of money into the home mortgage market has dramatically altered the business of mortgage lending, significantly reducing liquidity issues for banks, thrifts, and other lenders. Securitization has also created opportunities for non-depository institutions. Lenders no longer need to be financial institutions with significant deposits and capitalization. Instead, thinly capitalized creditors can originate loans for sale on the secondary market.[26] As a result of these innovations, mortgage credit of all types is widely available and should not be significantly affected by this final rule.

Commenters also claimed that the proposed rule conflicts with the decisions in *National Home Equity Mortgage Ass'n* v. *Face,* 239 F.3d 633 (4th Cir. 2001); and *Shinn* v. *Encore Mortgage Services Inc.,* 96 F.Supp.2d 419 (D.N.J. 2000). Commenters noted that *Face* and *Shinn* held that state housing creditors within OTS jurisdiction may charge prepayment fees under § 560.34, notwithstanding any restrictions in state law.

OTS's analysis is consistent with these two decisions. In the *Face* case, the United States Court of Appeals for the Fourth Circuit held that non-federally chartered housing creditors could elect to have alternative mortgage transactions governed by OTS regulations on prepayment fees because OTS had identified its prepayment fee regulation as applicable to alternative mortgage transactions. The court explained as follows:

> The particular issue presented in this case is whether a non-federally chartered institution in Virginia may require and enforce a prepayment fee in a mortgage agreement notwithstanding Virginia's limitation on prepayment penalties as contained in Virginia Code §§ 6.1–330.83 and 6.1–330.85. *The resolution of this issue depends on whether the OTS has issued regulations authorizing prepayment fees as part of its regulations for alternative mortgage transactions,* because if it has authorized the collection of prepayment fees

percent of the original principal amount of the loan.''

[20] 12 CFR 545.8–3(d) and (e) (1983).

[21] 12 CFR 701.21–6 and 701.21–6B, 12 U.S.C. 1757(10) (1982).

[22] 12 CFR 34.23 and 34.24.

[23] 12 CFR 701.21(a) and (b).

[24] These restrictions include restrictions on loans to one borrower, real estate lending standards governing such matters as loans-to-value ratios and underwriting standards, and appraisal requirements.

[25] The Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA) also facilitated new mortgage products by extending the variable rate ceiling for national banks to all federally insured banks and thrifts (12 U.S.C. 85, 1463(g), 1785(g), 1831d(a)), and by providing for the preemption of state usury ceilings on ''interest, discount points, finance charges and other charges'' for loans secured by first mortgages on borrowers' homes. 12 U.S.C. 1735f-7a. *See* Kathleen C. Engel & Patricia A. McCoy, A Tale of Three Markets: The Law and Economics of Predatory Lending, 80 Tex. L. Rev. 1255, 1275 (May 2002).

[26] *Id.* at 1273–74.

in alternative mortgage transactions, then Virginia may not apply its law proscribing such prepayment fees if the non-federally chartered housing creditor has otherwise complied with the requirements of the Parity Act.

239 F.3d at 638 (emphasis added). In short, the Court's ruling correctly rested on whether OTS had designated its prepayment fee regulation as applicable to alternative mortgage transactions. Under this analysis, if OTS did not so designate the prepayment fee regulation, then that regulation would not apply to alternative mortgage transactions, and non-federally chartered housing lenders would be subjected to state laws concerning prepayment fees.

Shinn addressed the limited issue of whether OTS acted reasonably and within the scope of its authority when it identified the prepayment provisions for alternative mortgage transactions under AMTPA. The *Shinn* case held that OTS rules reflected ''a permissible interpretation of the congressional authority vested in OTS'' under AMTPA.[27] The *Shinn* ruling does not preclude a different interpretation by the agency under AMTPA.

Accordingly, the removal of the prepayment and late charge rules from its list of identified regulations for state housing creditors is consistent with OTS's authority under AMTPA.

B. Impact on Predatory Lending

Commenters opposing the rule asserted that OTS initiated the proposed rule to respond to allegations that state housing creditors use the AMTPA regulations to avoid state consumer protection laws governing prepayments and late charges and to engage in abusive lending practices. These commenters argued that the proposed rule would do little to address predatory lending. They noted that no single loan term or practice is the hallmark of a predatory loan and that prepayment penalties and late fees are not inherently predatory. These commenters observed that non-predatory loans often provide for prepayment penalties or late fees and that, under certain circumstances, these terms can make it more difficult for lenders to engage in certain types of predatory lending, such as loan flipping.

Other commenters, however, indicate that two key indicia of predatory lending are prepayment penalties and late charges.[28] Prepayment penalties may inhibit the borrower's ability to refinance his or her loan at a lower rate. Prepayment penalties in sub-prime loans also function as deferred fees. Commenters indicated that over one-half of all sub-prime loans with prepayment penalties are eventually paid off with a penalty. These penalties typically are 5–7 percent of the loan amount.

Lenders may also impose excessive charges for untimely payments. Some alternative mortgage transactions regularly call for late fees of up to 10 percent of the monthly payment. Many states limit late fees to 4–5 percent of the payment amount.

Commenters opposing the proposed rule also argued that OTS cited no hard evidence indicating that prepayment penalties or late fees are subject to abuse under AMTPA regulations. Indeed, one commenter, a trade association representing a substantial segment of the real estate financing community, including national and regional lenders, mortgage brokers, mortgage conduits, and service providers, reported that it is unaware of any comprehensive report demonstrating that AMTPA rules are used to defraud or abuse customers. These commenters asserted that the anecdotal information provided in support of the ANPR is inadequate and that OTS should not proceed with this rule until it gains a more thorough understanding.

Because OTS does not directly regulate state housing creditors, it cannot collect information on state housing creditors that take advantage of AMTPA. OTS has found no comprehensive data available addressing this issue. However, as discussed below, the data sources cited and additional data submitted by commenters suggest that unregulated prepayment penalties and late charges may be subject to abuse.

1. A joint report issued by the Department of Housing and Urban Development (HUD) and the Department of the Treasury found that prepayment penalties in high cost loans can inhibit borrowers from refinancing at lower rates when their credit improves.[29]

2. Prepayment penalties are becoming more common in sub-prime loans. One commenter estimated that the frequency of prepayment penalties in sub-prime loans was 10 percent in 1995. Yet the HUD/Treasury Report indicates that four years later approximately 70 to 76 percent of sub-prime mortgage originations carried prepayment penalties.[30] Several commenters cited data from nationally recognized statistical rating agencies confirming the HUD/Treasury Report estimate. By contrast, between 1 and 2 percent of prime borrowers currently are subject to such penalties.[31]

3. Various commenters provided data to demonstrate the extent to which prepayment penalties and late charges are used in predatory lending. Although OTS has not independently verified the accuracy of this information, commenters included the following data. One commenter, a national representative of community reinvestment groups, sampled 30 loans drawn from its rescue fund files. The commenter found that the vast majority of the loans were high cost loans with burdensome monthly payments that consumed unreasonable portions of borrower income and included prepayment penalties. The commenter observed that a significant portion of the loans also had high late fees of 10 percent of the overdue payment. To expand their sample, the commenter reviewed two prospectus statements for loan securitizations by major sub-prime lenders available on the SEC's Web site and concluded that over 80 percent of the loans in the pools had prepayment penalties. In addition, the commenter suggested that high delinquency rates showed a failure to adequately document borrower income levels and pricing inefficiencies. Numerous commenters offered anecdotal information of predatory lending in their communities, including practices directed at minorities and the elderly. For example, one fair housing center indicated that it had 417 predatory lending cases in 2001 and that all of the loans in these cases included a prepayment penalty for a period of at least five years. Ninety-seven percent of these cases involved ARMs.

The above information leads to the reasonable conclusion that sub-prime

[27] 96 F. Supp. 2d at 425.

[28] A national representative of community reinvestment groups provided this information based on data obtained from its consumer rescue fund. The fund provides prime rate refinance loans for victims of predatory lending.

[29] The Joint HUD/Treasury Report on Recommendations to Curb Predatory Home Mortgage Lending (Apr. 20, 2000) (HUD/Treasury Report) at 94.

[30] *Id.* at 93.

[31] *Id.* As noted elsewhere in this document, some commenters argued that creditors often offer lower rates in return for prepayment penalties. Other commenters disputed the notion that sub-prime borrowers freely accept prepayment penalties as a means to lower their interest rates. These commenters noted that the vast majority of sub-prime applicants are never offered one rate without a prepayment penalty and a lower rate with a penalty. Even if these offers were made, commenters alleged that interest rates on sub-prime loans are not standardized and it is extremely difficult to comparison shop. Commenters further argued that it is implausible that sub-prime borrowers choose prepayment penalties such a high percentage of the time and prime borrowers do so only 2 percent of the time, particularly if one is describing a market that is driven by price competition.

lenders often include prepayment penalties in sub-prime loans. OTS recognizes that there is some disagreement as to the extent that prepayment penalties may affect a borrower's ability or willingness to refinance. It is reported that one unidentified study found that sub-prime loans with prepayment penalties are prepaid at about 90 percent of the rate of sub-prime loans without prepayment penalties.[32] Nevertheless, common sense dictates that the existence of a prepayment penalty may well inhibit a borrower from refinancing his or her loan, which can be problematic where a good payment history may allow the borrower to graduate to a lower cost loan.[33] Equally important, prepayment penalties may also be problematic in the sub-prime market where a borrower may be forced to refinance on less favorable terms in order to avoid default.[34] Indeed, those circumstances may account for the prepayment of many sub-prime loans. Additionally, the cost of the prepayment penalty may be refinanced in the new loan balance, which drives up the overall price of the loan to the borrower. High penalties that are repeatedly financed into the cost of successive loans may be used by lenders to strip borrowers' equity in the home.[35]

In short, OTS can properly conclude that the wide-spread use of prepayment penalties not only may deter consumers from seeking to refinance high cost loans that have burdensome provisions, but also may have other adverse consequences for sub-prime borrowers, such as increasing the overall lending cost for a consumer who refinances to avoid default.

OTS believes that laws on prepayment penalties and late charges are a key component in states' regulation of predatory lending. Because these laws reflect each state legislature's judgment, after due consideration, about appropriate consumer protections applicable to state chartered lenders, OTS will not construe its authority under AMTPA to frustrate these state efforts where another less intrusive construction of AMTPA is permissible.

C. Scope of Preemption Under AMTPA

One commenter requested OTS to specifically state that creditors offering mortgages under AMTPA must comply with *all* state laws relating to alternative mortgages, except those that expressly conflict with regulations identified by OTS.

AMTPA provides little explicit guidance regarding the types of state laws that Congress intended to preempt. A few conclusions, however, may be drawn. AMTPA preempts state laws that would ban a state housing creditor from entering into an alternative mortgage (*e.g.*, a law that bars variable rate loans). Similarly, state laws that conflict, or are inconsistent, with identified OTS regulations would be preempted. Because OTS is no longer identifying its regulations on prepayment penalties and late charges, state laws addressing prepayments or late charges generally would not be preempted by AMTPA.[36]

D. Alternatives, Modifications, and Clarifications

Commenters addressed the following alternatives, modifications, and clarifications of the proposed rule.

1. Modify Regulations Applicable to Federal Thrifts

As an alternative to the proposed rule, a number of commenters urged OTS to revise §§ 560.33 and 560.34. Commenters urged OTS to impose reasonable limitations on prepayment penalties and late charges by federal thrifts and apply these limitations to state housing creditors under AMTPA. Commenters suggested: (1) Banning prepayment penalties and late charges on all mortgage transactions or on high-cost alternative mortgage transactions; (2) Permitting prepayment penalties only during the first two years after origination of the alternative mortgage transaction; (3) Restricting the amount of prepayment penalties; and (4) Requiring a lender that wishes to impose a prepayment penalty to demonstrate that it has offered the customer a loan with a prepayment penalty and an identical loan (at a lower rate) without a prepayment penalty.

OTS declines to adopt any of these alternatives. OTS oversight and review of federal savings associations have not revealed a level of abusive practices that would warrant industry-wide regulation. Rather, OTS believes that the current prepayment and late charge regulations, when combined with the OTS comprehensive regime of regular examination and supervision of the lending activities of federal savings associations and its related enforcement activities, are adequate to address the operations of federal thrifts and to discourage their participation in predatory practices. In light of these factors, OTS is disinclined to impose new regulatory burdens on the federal savings associations within its jurisdiction.

Additionally, OTS notes that the suggested changes, to the extent they would regulate the operations of federal savings associations, fall beyond the scope of the proposed rule and would require additional public comment under the Administrative Procedure Act. 5 U.S.C. 553.

2. Apply §§ 560.33 and 560.34 to State Savings Associations

AMTPA requires OTS to identify regulations for state housing creditors, which includes both depository institutions and non-depository institutions. By contrast, OCC and NCUA regulations apply only to depository institutions (*i.e.*, state chartered commercial banks and credit unions). The NPRM noted that state savings associations are subject to a safety and soundness regulatory scheme that is similar to the regulation of federal thrifts and substantially different from other state housing creditors. On this basis, OTS asked whether it should treat state chartered savings associations differently under AMTPA. OTS also asked whether AMTPA authorizes the agency to differentiate between state housing creditors on this basis.

The NPRM also noted that §§ 560.33 and 560.34 could be viewed as safety and soundness-based regulations. For example, § 560.34 permits federal thrifts to moderate prepayment risk through the assessment of prepayment penalties. Similarly, § 560.33 allows federal savings associations to encourage the timely payment of loans and to recover costs associated with late payment. Accordingly, OTS asked whether it was appropriate to apply these rules to some or all mortgage transactions by state chartered housing lenders that are depository institutions.

[32] HUD/Treasury Report *supra* note 29, at 94.

[33] *Id.*

[34] Engel & McCoy, *supra* note 25, at 1285.

[35] HUD/Treasury Report *supra* note 29, at 73–75, 94. The practice of repeated refinancing of a mortgage loan within a short time period with little or no benefit to the borrower is referred to as loan flipping. Loan flipping typically occurs when a borrower is unable to meet scheduled payments or repeatedly consolidates other unsecured debts into a new home-secured loan at the urging of a lender. In addition to the origination fees, each refinancing may trigger prepayment fees. Such fees may be refinanced as a part of the total loan amount and ultimately strip borrowers' equity out of the borrower's home. *Id.*

[36] The OTS April 30, 1996 legal opinion stated that AMTPA would preempt a state law *even in the absence of a designated OTS regulation,* if state housing creditors would be disadvantaged. Based on these statements, the commenter asserted that state laws addressing prepayment penalties would continue to be preempted even if OTS no longer designated §§ 560.33 and 560.34 as applicable. As noted above, OTS reviewed its prior position and, after further consideration, concluded that prepayment penalties and late charges are not essential to parity; that state housing creditors would not be disadvantaged within the meaning of AMTPA if state laws on these subjects applied to their loans; and that state laws on these subjects are not preempted.

Commenters supporting this alternative observed that federal laws governing state and federal savings associations have become more similar since 1989 and that OTS has increasingly applied many federal thrift operational and supervisory regulations to state savings associations. Commenters also remarked that state and federal savings associations pursue similar strategies within a similar corporate and regulatory structure. As a result, the lending authority of these two types of depository institutions should be similar. Commenters also asserted that state savings associations were less likely to engage in predatory practices than unregulated lenders and mortgage brokers.

OTS is authorized under the HOLA to provide for the examination, safe and sound operation, and regulation of federal and state savings associations, and to issue appropriate regulations addressing these subjects. 12 U.S.C. 1462a(b)(2), 1463(a) and 1464(a).[37] However, state savings associations are also creatures of state law. States have responsibility for addressing safety and soundness, as well as legislating consumer protection for their citizens. OTS rules must strike a reasonable regulatory balance to permit the dual banking system to operate. Many state laws permit state chartered institutions to comply with laws and regulations governing federally chartered institutions as an alternative to state regulation. OTS believes that this choice should remain within state discretion and that state thrifts should be required to comply with state law, except where federal regulation is necessary.[38]

At this point, OTS has concluded that AMTPA does not permit it to distinguish between state chartered savings associations and other state housing creditors. AMTPA states that transactions by all state housing creditors, other than banks and credit unions, must be made in accordance with regulations governing alternative mortgage transactions issued by OTS. 12 U.S.C. 3803(a). While the statute indicates that state housing creditors include savings and loan associations, mutual savings banks, and savings banks, nothing in AMTPA or its legislative history permits OTS to identify different regulations for state housing creditors that are depository institutions. Accordingly, OTS has concluded that AMTPA does not permit the proposed distinction.

OTS, however, will continue to review the impact of these changes on state chartered savings associations and will consider suggestions from interested persons as to whether additional changes are permissible and necessary. If appropriate, OTS may address this matter in a separate rulemaking at some future date.

3. Definition of Alternative Mortgage Transaction

AMTPA defines an alternative mortgage transaction as a loan or credit sale secured by an interest in residential real property—

(A) in which the interest rate or finance charge may be adjusted or renegotiated;
(B) involving a fixed-rate, but which implicitly permits rate adjustments by having the debt mature at the end of an interval shorter than the term of the amortization schedule; or
(C) involving any similar type of rate, method of determining return, term, repayment, or other variation not common to traditional fixed-rate, fixed-term transactions, including without limitation, transactions that involve the sharing of equity or appreciation;

described and defined by applicable regulation * * *.[39]

Thus, AMTPA applies to all manner of mortgage instruments that do not conform to the traditional fully-amortized, fixed-interest rate mortgage loan. OTS rules adopt this statutory definition without elaboration.[40]

Several commenters requested OTS to clarify whether loans with certain terms are alternative mortgage transactions under OTS rules. Specifically, commenters seek clarification regarding the following loan terms:

- Interest rates that reduce if the borrower pays on time. OTS has opined that loans that permit rate adjustments to reflect a borrowers' actual payment performance can be alternative mortgage transactions under paragraph (A) or (C) of the definition.[41]
- Balloon payments. To the extent that a loan has a fixed rate, but permits rate adjustments by having the debt mature at the end of an interval shorter than the term of the amortization schedule (*e.g.*, a balloon loan), a loan may be an alternative mortgage transaction under paragraph (B).[42]
- Shared appreciation. Shared appreciation loans are specifically included in the definition at paragraph (C) and can be an alternative mortgage transaction.
- Prepayment penalties and late charges. While prepayment penalties and late fees may affect a creditor's rate of return on a loan, conventional prepayment penalties and late charges are ''common to traditional fixed-rate, fixed-term transactions'' and do not transform a fixed-rate, fixed-term loan into an alternative mortgage transaction.
- Negative amortization. Some mortgages, such as ARMs and graduated payment loans, are designed to negatively amortize or have the potential to negatively amortize, in the absence of delinquency or default. OTS believes that these transactions are alternative mortgages under AMTPA.

Several commenters asked whether loans with interest rates that adjust insignificantly or within a very narrow range would fall within the definition of an alternative mortgage transaction. The AMTPA definition does not expressly require a loan to adjust by a minimum amount before it may be considered to be an alternative mortgage transaction. However, creditors issuing loans that are alternative in form, but not substance, solely to obtain the benefits of preemption, assume the risk that the loans may not be found to be alternative mortgage transactions within the AMTPA definition.

4. Definition of State Housing Creditor

One commenter cautioned that certain statements in the NPRM were misleading to the extent they indicated that a housing creditor must hold a state license to be eligible to make a loan under AMTPA. The commenter observed that state laws exempt certain creditors from state licensing obligations. AMTPA does not unconditionally require a housing

[37] While OTS has authority to apply these two regulations to state chartered savings associations, it has no authority under the HOLA over state savings banks. Therefore, OTS's application of these rules to state chartered savings associations would still result in disparate treatment for one type of depository institution, state chartered savings banks.

[38] Most states addressing the area have restricted the imposition of prepayment penalties, rather than imposed outright prohibitions against all such penalties for alternative mortgages. OTS is not aware of any state that prohibits all late charges. This illustrates that each state has weighed and struck its own balance regarding the regulation of state housing creditors and the protection of state consumers.

[39] 12 U.S.C. 3802(1).

[40] The current regulation at 12 CFR 560.220 includes a specific cross-reference to the statutory definition, but the proposed rule text did not. To clarify this point, OTS has revised the final rule to include the statutory reference.

[41] *See* OTS Op. Chief Counsel (Nov. 27, 1996) (A loan that explicitly provides for a specified increase in the interest rate if the borrower becomes delinquent for more than 30 days twice in a revolving twelve month period is an alternative mortgage transaction under paragraph (A) or (C) of the definition).

[42] *See* OTS Op. Chief Counsel (Feb. 10, 1997). *But see Hays* v. *Bankers Trust Co.,* 46 F. Supp. 2d 490, 499 (S.D.W.V. 1999) (footnote 17 states that AMTPA applies only to ARMs and does not cover the loan at issue, which was a balloon loan. This footnote appears to be erroneous in light of paragraph (B) of the definition).

creditor to hold a state license.[43] Rather, it merely requires a creditor to hold a state license where the underlying state law imposes a licensing requirement.

5. Preemption for Operating Subsidiaries

Two commenters asked OTS to confirm that operating subsidiaries of federal thrifts have the same lending authority and benefits of federal preemption as federal thrifts and, thus, do not need to use AMTPA to preempt state law. Another commenter, however, hinted that operating subsidiaries of federal thrifts should be treated like other state housing creditors under AMTPA.

Under OTS rules, operating subsidiaries of federal thrifts are subject to the same requirements as federal thrifts. For example, an operating subsidiary is permitted to engage in any activity that the federal savings association may conduct directly. 12 CFR 559.3(e)(1). Unless specifically provided by statute, regulation, or OTS policy, all federal statutes and regulations apply to operating subsidiaries in the same manner as they apply to federal savings associations. 12 CFR 559.3(h)(1). In addition, state laws apply to operating subsidiaries only to the extent that they apply to a federal savings association. 12 CFR 559.3(n)(1). OTS has taken these positions because operating subsidiaries, which may only engage in activities permissible for its parent federal savings association and must be controlled by the thrift, are treated as the equivalent of the parent thrift for regulatory and reporting purposes.[44] Because operating subsidiaries of federal savings associations have the same lending authority and benefits of federal preemption, they do not need to use AMTPA to preempt state law.

6. Retroactive Application

One commenter asked whether the final rule will apply to loans consummated before the effective date. The commenter warned that borrowers would argue that the new rule must apply retroactively to existing transactions because OTS was ''incorrect'' when it revised the rules in 1996. In this final rule, OTS has selected between two permissible interpretations of AMTPA based upon a reevaluation of the statute. OTS has, in no way, concluded that the 1996 rule changes reflected an impermissible construction of its statute. Accordingly, there is no basis for arguing that the final rule applies retroactively to transactions consummated before the effective date.

Even if OTS were to assume that it had the ability to apply this rule retroactively, such a position would seriously disrupt the mortgage markets. Borrowers and originating lenders have made pricing decisions regarding the interest rates and conditions and terms of mortgages based on the inclusion or exclusion of prepayment penalties. Similar pricing decisions have been made regarding secondary sales of these mortgages, either on a whole loan basis or as a part of mortgage pools backing securities. OTS does not believe that it may take away or impair vested rights acquired under a lawfully issued and effective regulation.

E. Legislative Recommendations

Numerous commenters on the NPRM urged OTS to recommend that Congress repeal AMTPA. These commenters noted that AMTPA was passed in a high interest rate environment and was designed to permit state chartered institutions to offer alternative mortgage transactions that were otherwise prohibited under state law. Because all states, except one, permit alternative mortgage transactions, these commenters asserted that AMTPA has outlived its usefulness and may be repealed. Other commenters, however, supported the retention of AMTPA. These commenters noted that state laws continue to restrict or prohibit alternative mortgage transactions and that local governments are beginning to regulate this area.

Legislative actions affecting AMTPA are beyond the scope of this rulemaking. In OTS's view, however, piecemeal legislative and regulatory solutions aimed at the various complex issues raised under AMTPA—predatory lending, the availability of credit, and parity among housing creditors—are not the best way to approach this problematic area. Accordingly, OTS and a substantial number of commenters on the NPRM believe that that Congress should revisit AMTPA, in the context of broader mortgage reform legislation involving the Real Estate Settlement Procedures Act,[45] the Truth In Lending Act,[46] and predatory lending. Only comprehensive reform can guarantee that borrowers receive meaningful information in a comprehensive and comprehensible form, that healthy competition between housing creditors is stimulated so that affordable housing credit continues to be available to consumers, and that statutory and regulatory burdens are minimized. OTS continues to advocate broad-based reform in this area as well as a review of existing laws that have inconsistencies and duplications that make the mortgage process more complicated and expensive for consumers than is needed.

OTS also indicated that it would make two recommendations if Congress decides to retain AMTPA. First, OTS suggested that Congress should give states a new opportunity to opt out from AMTPA preemption. Congress originally gave the states three years to opt out of AMTPA preemption. If a state opted out, state housing creditors would continue to be bound by the state's regulations on alternative mortgage transactions.[47] Only a handful of states decided to reject preemption.

Commenters opposing a new opt out period argued that this change would increase costs to consumers, raise new compliance issues, reduce certainty in the markets, and raise the possibility that Congress would add new opt out periods to other statutes including DIDMCA. One commenter feared that many states would opt out, which would gut the application of what was intended as a uniform law.

The mortgage loan market has seen dramatic and fundamental changes since the original opt out period closed in 1985. Certain changes, such as the general acceptance of alternative mortgage transactions under state law and the increased availability of housing credit, may have been anticipated. The states, however, could not have anticipated other changes, such as the explosion in sub-prime lending, increases in predatory practices by lenders, and the breadth of preemption of state law permitted under AMTPA. Given these changes, OTS believes that the states should have a new opportunity to opt out of AMTPA.

OTS also indicated that it would recommend that Congress require state housing creditors making loans under AMTPA to identify themselves to the states. Several commenters observed that this disclosure would enhance enforcement and monitoring activities by state supervisory agencies, fair housing organizations, and others. One commenter, however, argued that this revision is unnecessary because AMTPA

[43] 12 U.S.C. 3802(2) states: ''A person is not a 'housing creditor' with respect to a specific alternative mortgage transaction if, except for this chapter, in order to enter into that transaction, the person would be required to comply with licensing requirements imposed under State law, unless that person is licensed under applicable State law and such person remains, or becomes, subject to the applicable regulatory requirements and enforcement mechanisms provided by State law.''

[44] *See* 61 FR 66561, 66563 (Dec. 18, 1996).

[45] 12 U.S.C. 2601 *et seq.*

[46] 15 U.S.C. 1601 *et seq.*

[47] 12 U.S.C. 3804(a).

requires state housing creditors to comply with state licensing requirements and states have the authority to require these creditors to identify themselves to the state regulator.

OTS continues to believe that enforcement is difficult unless states have a reliable means of identifying AMTPA creditors. OTS will continue to make this recommendation to ensure that all states have the ability to utilize their applicable enforcement mechanisms.

II. Preemption of State Usury Laws (12 CFR Part 590)—Late Fees on Federally-Related Residential Manufactured Housing Loans

Part 590 implements section 501 of DIDMCA.[48] Section 501 provides for the permanent preemption of state laws that expressly limit the rate or amount of interest, discount points, finance charges, or other charges assessed in connection with certain federally-related residential loans. This preemption does not apply to loans secured by a first lien on a residential manufactured home unless the loan complies with consumer protections in § 590.4. This regulation addresses such matters as balloon payments, prepayment penalties, late charges, deferral fees, notice before repossession or foreclosure, and the refund of prepaid interest. Section 590.4(f) specifically addresses late charges. Paragraph (f)(4) states: ''To the extent that applicable state law does not provide for a lower charge * * * a late charge on any installment * * * may not exceed the lesser of $5.00 or five percent of the unpaid amount of the installment.''

OTS proposed to eliminate the $5.00 limit. Two commenters opposed this change. They noted that this change would permit lenders to increase allowable late fees several times over the current levels and would facilitate predatory lending. Commenters also observed that low-income borrowers, including limited-income seniors, are more likely to live in manufactured homes and would be adversely affected by the rule change. Four commenters supported the proposed change because it would: (1) Ensure that lenders are adequately compensated; (2) provide a stronger self-adjusting incentive for consumers to pay on time; and (3) provide parity with late charges permitted under state laws.

OTS has not adjusted the $5 limit on late fees in 20 years. As a result, the limit has not kept pace with lenders' costs and is too small to serve as an effective deterrent to late payment. According to commenters, the $5 limit is an effective percentage rate of only 1.3 percent of the average manufactured home loan payment. This amount is well below the prevailing state late fee for manufactured housing, which commenters assert is 5 percent of the loan installment payment. By contrast, the proposed limit is within the mix of late fee structures established under state law.

While some commenters feared that the proposed rule would facilitate predatory lending, the revised regulation continues to impose effective limitations on such practices. As revised, § 590.4 limits the late charge to 5 percent of the unpaid amount of the installment unless the state provides for a lower amount. In addition, the rule would continue to provide that:

- No late charge may be assessed, imposed, or collected unless the written contract between the borrower and the lender provides for the charge (§ 590.4(f)(1)).
- No late charge may be collected if an installment is paid in full on or before the 15th day after its scheduled or deferred due date, unless state law permits a longer period (§ 590.4(f)(2)).
- A late charge may be imposed only once on an installment, and may not be collected if an installment has been deferred § 590.4(f)(3).

The NPRM asked whether OTS should also eliminate the 5 percent limit on the amount of the late fee and permit state law to govern the amount of late charges. One commenter supported and one commenter opposed this change. A third noted that this alternative would not have a significant impact since few states allow late charges in excess of 5 percent.

OTS has retained the 5 percent late fee limitation. While few states permit a lower charge, OTS believes that the 5 percent fee serves as an effective consumer safeguard to the extent that states permit late fees in excess of 5 percent of the unpaid amount.

III. Preemption of State Due-on-Sale Laws (12 CFR Part 591)—Definition of Reverse Mortgage

OTS proposed a minor technical change to part 591, which implements section 341 of the Garn St. Germain Depository Institutions Act of 1982 (12 U.S.C. 1701j–3).[49] Part 591 governs due-on-sale clauses in real estate loans and the preemption of state prohibitions on such clauses. OTS proposed to revise the definition of reverse mortgage at § 591.2(n) to clarify that a reverse mortgage is not limited to a loan that provides for periodic payments, but also includes a loan that provides for a lump sum payment. This change is consistent with OTS legal opinions,[50] and no commenter addressed the issue. The proposed rule is adopted without change.

IV. Regulatory Certifications

A. Executive Order 12866

The Director of OTS has determined that the final rule does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866.

B. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires federal agencies to prepare a final regulatory flexibility analysis with a final rule that was subject to notice and comment, unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

Parts 590 and 591. OTS did not prepare an initial or final regulatory flexibility analysis for the revisions to parts 590 and 591. The change to part 590 affects creditors making federally-related loans secured by first liens on residential manufactured housing. The final rule provides these creditors with greater flexibility in charging late fees, while retaining the benefits of preemption of state usury laws under section 501 of DIDMCA. The current rule limits late fees to $5, which has proven to be too small to deter late

[48] 12 U.S.C. 1735f–7a.

[49] Pub. L. 97–320, 96 Stat. 1469 (1982).

[50] OTS Op. Chief Counsel (June 2, 2000) (reverse mortgage loans include an instrument providing for a lump sum payment).

payments. The final rule permits the imposition of a more tangible penalty and will benefit all creditors making such loans, including small businesses. Part 591 permits all lenders, whether federally- or state chartered, to exercise due-on-sale clauses in real property loans without regard to state law. The final rule makes a clarifying change that broadens the definition of reverse mortgage and codifies an existing OTS interpretation. OTS believes that the impact of the final rule on lenders should be beneficial. Thus, OTS certifies to the Chief Counsel of Advocacy of the Small Business Administration that the changes to parts 590 and 591 will not have a significant economic impact on a substantial number of small entities.

Section 560.220. OTS has performed a final regulatory flexibility act analysis for the changes to § 560.220. A description of the reasons why OTS is adopting the final rule, a statement of the objectives of, and legal basis for, this aspect of the final rule are included in the supplementary material above. In addition, OTS has addressed the following topics.

1. Small Entities to Which the Rule Applies

Section 560.220 applies to state housing creditors other than credit unions or commercial banks. OTS does not compile data on the total number of state housing creditors that may utilize § 560.220. Moreover, except for state chartered savings associations, OTS does not have any authority to require state housing creditors to identify themselves or submit other data to OTS. Similarly, AMTPA does not require state housing creditors to notify the states that they are taking advantage of it. As a result, OTS has little information regarding how many state housing creditors may use § 560.220 or how many of these creditors are small businesses.

Nonetheless, OTS estimates that 6,757 small state housing creditors may be affected by this regulation. United States Census data indicates that 7,257 firms (excluding depository institutions) engage in real estate credit. OTS estimates approximately 6,457 of these firms are small businesses.[51] Based on the most recent TFR and Call Report data, OTS estimates that an additional 300 state chartered savings associations and state savings banks are small businesses.[52] For purposes of this analysis, we have assumed that all 6,757 of these small businesses engage in alternative mortgage transactions.

OTS believes that this number may overstate the number of small businesses that may be affected by the changes to the final rule for several reasons. First, the use of AMTPA is solely at the election of the state housing creditor. State housing creditors may, for whatever reason, decline to use AMTPA for their alternative mortgage transactions. Moreover, many small state housing creditors will conduct alternative mortgage transactions that are governed by laws in states that either:

- Opted out of AMTPA. State housing creditors conducting alternative mortgage transactions governed by these laws currently cannot use § 560.220 to preempt state law; or
- Enacted statutes that do not impose any substantive prohibitions and restrictions on prepayments or late charges for the loans. State housing creditors may continue to charge penalties and fees on alternative mortgage transactions in these states, notwithstanding the final rule.

OTS's original estimate of small businesses was based on the best information available to it. OTS encouraged commenters with access to more complete and more accurate data to submit information regarding the number of state housing creditors (other than credit unions or commercial banks) that may be affected by this rule. OTS also requested information regarding how many of these creditors may be small businesses.

One commenter argued that OTS underestimated the number of small businesses affected by the rule. The commenter asserted that OTS excluded 40,000 to 50,000 mortgage brokers who originate the majority of residential loans in the United States. The commenter also asserted that thousands of appraisers and title companies would also see diminished revenues.

OTS used United States Census data to determine the number of non-depository institutions that would be effected by the rule. Specifically, OTS used the Census classification—NAICS 522292—Real Estate Credit, which is a subcategory within NAICS 5222—Non-Depository Credit Intermediation. NAICS 5222 includes establishments that are primarily engaged in extending credit or lending funds raised by credit market borrowing. Within this group, industries are broken out based on the type of credit extended. The selected classification—NAICS 522292—comprises non-depository institutions that are engaged in lending funds with real estate as collateral and includes mortgage bankers and loan correspondents.

The Regulatory Flexibility Act requires an agency to consider direct effects that a regulation may have on small businesses that it regulates. OTS is not, however, required to analyze the effects of its rule on entities that it does not regulate. Arguably, OTS regulates state housing creditors that make loans, credit sales, or advances secured by interests in real property.[53] However, it does not directly impose any regulation on those entities that garner fees through brokerage services or through other services that facilitate the credit intermediation process. Accordingly,

[51] OTS based this figure on firms reported under NAICS 522292 and the special tabulation of the 1997 economic census from the United States Bureau of the Census. The initial regulatory flexibility analysis estimated that 6,300 of the 7,257 firms were small businesses. OTS has revised this figure to reflect recent increases to SBA's thresholds defining small businesses. A firm engaged in real estate credit is now considered small if it has total receipts of $6 million or less per year. 67 FR 3041 (Jan. 23, 2002) *to be codified* at 13 CFR 121.201. The threshold previously was $5 million. 13 CFR 121.201 (2002). While the 1997 special tabulation does not indicate the number of real estate credit firms that had less than $6 million in receipts, it indicates that an additional 157 firms had less than $7.5 million in receipts. Recognizing that this number will overstate the number of small businesses satisfying the $6 million threshold, OTS has estimated that there are 6,457 small firms engaged in real estate credit.

[52] OTS originally estimated that an additional 86 depository institutions were small state chartered housing creditors. This number has been revised to 300. The number used in the initial regulatory flexibility analysis did not include state savings banks, and must be recalculated to reflect recent changes to the SBA's thresholds defining small depository institutions. Until recently, small depository institutions were defined, for RFA purposes, as depository institutions with assets under $100 million. 13 CFR 121.201 (2002). The threshold amount, however, was increased to $150 million. *See* 67 FR 3041 (Jan. 23, 2002) *to be codified* at 13 CFR 121.201. Based on March 2002 TFR data, OTS regulates 135 state savings associations. Of these savings associations, 93 have assets of $150 million or less. Based on March 2002 Call Report data, the FDIC regulates 508 state savings banks. Of these state savings banks, 207 have assets of $150 million or less.

[53] OTS questions whether a regulatory flexibility analysis is required for the rule. Revised 12 CFR 560.220 imposes no restriction or limitation on any small entity's ability to impose prepayment penalties or late charges. Rather, the rule leaves the regulation of these matters entirely to the discretion of the individual states. As a result, OTS believes that it may certify that the rule will not have a significant impact on a substantial number of small entities. *See American Trucking Ass'n, Inc.* v. *EPA,* 175 F.3d 1027 (D.C. Cir. 1999) (The D.C. Circuit held that EPA was not required to perform a regulatory flexibility analysis for its national ambient air quality standards (NAAQS). The NAAQS imposed no regulations on small entities. Instead, each state regulated small entities through the state implementation plans that they were required to develop under the Clean Air Act. Because the NAAQS regulated small entities only indirectly—that is, insofar as they affected the planning decisions of the states—the EPA concluded, and the D.C. Circuit agreed, that small entities were not subject to the rule).

OTS has not included within its tabulation entities that appear within the classification NAICS 5223—Activities Related to Credit Intermediation. This classification includes establishments that are primarily engaged in facilitating credit intermediation by performing activities, such as arranging loans by bringing borrowers and lenders together on a commission or fee basis.[54]

2. Requirements of the Rule

AMTPA permits certain state housing creditors to make, purchase, and enforce alternative mortgage transactions without regard to any state constitution, law, or regulation, provided that they comply with regulations identified by OTS. As described more fully in the supplementary information section, the final rule no longer identifies rules on prepayment and late charges for state housing creditors under AMTPA. As a result, these state housing creditors will likely be subject to state laws addressing prepayment and restricting late charges.

OTS is unable to quantify the impact of the final rule on small state housing creditors for several reasons. Based on available data, it is difficult to determine how many alternative mortgage transactions were made under OTS AMTPA regulations. Industry-wide data is available only for one type of alternative mortgage transaction—ARMs. Other types of mortgages with alternative features are generally reported as fixed-rate mortgages. The available data, however, indicates that all housing lenders originated $243.6 billion and $256 billion in ARMs in 2001 and 2000, respectively.[55] The most recent data available indicates that state housing creditors (excluding commercial banks and thrifts) account for approximately 56.3 percent of all lending or $137.1 billion and $144.1 billion of ARMs in 2001 and 2000.[56] OTS estimates that $17.0 billion and $17.9 billion of these ARM loans were originated by small state housing creditors in 2001 and 2000.[57] This available data, however, does not distinguish between transactions that are made under AMTPA, and those that are not. As noted above, OTS has no authority to require state housing creditors that use § 560.220 to provide this information.[58]

In the ANPR and NPRM, OTS attempted to obtain more complete and accurate information regarding the extent to which state housing creditors and small state housing creditors engage in alternative mortgage transactions under AMTPA. OTS also requested information concerning the amount of late fees and prepayment penalties generated by these alternative mortgage transactions. Commenters, however, provided no reliable additional information on this subject.[59]

Even if reliable estimates were available, these amounts would not accurately reflect the impact of the deletion of the preemption of prepayment charge provisions and late charge provisions. The 6,757 small state housing creditors that may be affected by the final rule will become subject to a broad range of state laws. For example, some of these laws may continue to permit the imposition of prepayment penalties. Others may prohibit or restrict prepayment charges. Still other laws would subject prepayment penalties to a range of restrictions, such as prohibiting penalties for a set period after execution of the note or mortgage or limiting the amount of the prepayment penalty. Based on this wide variety of restrictions and the fact that state laws will change over time, OTS cannot determine how much income would be lost by small state housing creditors under the rule.[60]

Moreover, the impact of the loss of prepayment penalties may be ameliorated somewhat through other techniques. For example, lenders often impose a higher overall interest rate where prepayment penalties are excluded from the loan agreement.[61] In addition, some commentators assert that the payment of points upon origination and the imposition of a prepayment penalty are economically equivalent transactions. Since a mortgage with points includes an implicit and easily calculable prepayment penalty, state housing creditors may substitute points where prepayment penalties are prohibited.[62]

Some commenters indicated that OTS did not fully consider all impacts on small businesses, such as increased compliance costs to conform to newly applicable states laws, and the negative economic effects on small entities' ability to offer a competitive product, to address prepayment risk, or to access the secondary loan markets. Commenters, however, did not provide any reliable estimates or sources of information regarding the magnitude of these impacts on small entities.

3. Significant Alternatives

Section 603(c) of the RFA requires OTS to describe any significant alternatives that accomplish the stated objectives of the rule while minimizing any significant economic impact of the rule on small entities. Section 603(c) lists several examples of significant alternatives, including: (1) Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance and reporting requirements for small entities; (3) using performance standards rather than design standards; and (4) excepting small entities from coverage of the rule or a part of the rule.

[54] Mortgage and non-mortgage loan brokers are included within a subcategory of this classification—NAICS 52231.

[55] The Mortgage Bankers Association's Web site at *www.mbaa.org* indicates that the industry originated $2,030 billion in 1- to 4-family mortgages in 2001, and $1,024 billion of these loans in 2000, and that 12 percent and 25 percent of these loans were ARMs in 2001 and 2000, respectively.

[56] This information was also obtained on the Mortgage Bankers Association's Web site, which indicates that its source was a HUD Survey of Mortgage Lending Activity discontinued in 1998.

[57] OTS computed this figure using receipts by real estate creditors as proxy for originations. Based on these figures, OTS estimates that small creditors accounted for 12.4 percent of all ARM originations by real estate creditors.

[58] OTS does not currently collect data on the ARM originations by the small state savings associations. However, March 2002 CMR data indicates that these 93 thrifts hold approximately $1.04 billion of ARMs in their portfolios. Again, this data does not distinguish transactions subject to AMTPA regulations.

[59] One of the commenters on the ANPR, a trade association representing a substantial segment of the real estate financing community, including national and regional lenders, mortgage brokers, mortgage conduits, and service providers, stated that it ''does not have specific numbers regarding the extent to which lenders are using AMTPA to craft alternative mortgage products that would otherwise be affected by state law. Furthermore [it] knows of no reliable and comprehensive industry data from any source.''

[60] *See* ''The Handbook of Mortgage-Backed Securities,'' 88–101 (Frank J. Fabozzi, ed. (5th ed. 2001)), which contains a compilation of current state laws on prepayment penalties.

[61] In April 2000, one large sub-prime lender indicated that it lowered the interest rate on a loan by 75 basis points for those borrowers who accepted a prepayment penalty. See Joint HUD/Treasury Report supra note 29, at 93, citing information from the New Century Mortgage Corporation Web site, *www.newcentury.com.*

[62] Alan L. Feld & Stephan G. Marks, Legal Differences Without Economic Distinctions: Points, Penalties, and the Market for Mortgages, 77 B.U. L. Rev. 405 (1997). Some commenters objected to OTS's suggestion that state housing creditors can ''ameliorate loss of income by substituting points or simply raising rates.'' They argued that a point is an immediate, out-of-pocket cost to a borrower. That cost is fixed regardless of whether the borrower keeps the loan for its full term, or chooses to repay or refinance the loan at some earlier date. By contrast, a prepayment penalty does not necessarily cost the borrower anything if the loan is retained through the prepayment penalty period. Commenters asserted that state housing creditors would be at a distinct disadvantage because they must charge higher rates and points. Even if one assumes that the average loan will prepay and cost a penalty, such costs in the aggregate will be less than if lenders are forced to ameliorate. Even if competitive equality were not the issue, state housing creditors would still be limited by state caps on rates.

OTS considered retaining its current identification of regulations for all state housing creditors. For the reasons discussed above, OTS believes that this course is inappropriate. OTS also considered whether it should continue to identify the existing regulations for small state housing creditors, but not for other state housing creditors. However, given its analysis of the purposes and goals of AMTPA, OTS has concluded that it is inappropriate to distinguish between small and large state housing creditors.

OTS solicited comments on other alternatives that would minimize the burdens on small state housing creditors. The commenters did not suggest any alternatives aimed at small housing creditors. Other alternatives, however, are discussed in the supplementary information section above.

4. Other Matters

Various federal rules or statutes duplicate or overlap with the final rule. NCUA has identified all of its lending regulations as applicable to alternative mortgage transactions by state chartered credit unions. 12 CFR 701.21(a). These regulations address such matters as the term of the loan, requirements governing security instruments, notes, liens, due-on-sale provisions, and assumptions. These rules specifically prohibit prepayment penalties and preempt state laws on prepayment limits and late charges. OCC, on the other hand, has identified as applicable to state chartered commercial banks, its rules that directly relate to ARMs. OCC's identified regulations define ARM loans; state that ARMs may be made, sold, purchased, participated in, or dealt in without regard to any state law limitation on those activities; authorize certain indexes; and allow prepayment fees. 12 CFR 34.24.

In addition, the Home Ownership and Equity Protection Act (HOEPA) [63] imposes limits on certain high cost mortgage loans by state housing creditors. These limits include restrictions on balloon payments, prepayment penalties, and other matters. Other federal statutes and rules may also preempt the application of state laws on prepayments and late fees for alternative mortgage transactions by state housing creditors. *See e.g.*, 12 CFR 590.4 (preemption of state usury laws under section 501 of DIDMCA—first liens on residential mobile homes) and 12 CFR part 591 (preemption of state due-on-sale clauses under section 341 of Garn St. Germain Depository Institutions Act of 1982).[64]

OTS is aware of no federal rules or statutes that conflict with the final rule.

D. Federalism

Executive Order 13132 imposes certain requirements on an agency when formulating and implementing policies that have federalism implications or taking actions that preempt state law. In accordance with those requirements, OTS has consulted with the Conference of State Bank Supervisors and the National Association of Attorneys General concerning this change.

List of Subjects

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 590

Banks, banking, Loan programs—housing and community development, Manufactured homes, Mortgages, Savings associations.

12 CFR Part 591

Banks, banking, Loan programs—housing and community development, Mortgages, Savings associations.

Accordingly, the Office of Thrift Supervision amends 12 CFR parts 560, 590, and 591 as set forth below:

PART 560—LENDING AND INVESTMENT

1. The authority citation for part 560 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

2. Revise § 560.220 to read as follows:

§ 560.220 Alternative Mortgage Transaction Parity Act.

(a) *Applicable housing creditors.* A housing creditor that is not a commercial bank, a credit union, or a federal savings association, may make an alternative mortgage transaction as defined at 12 U.S.C. 3802(1), by following the regulations identified in paragraph (b) of this section, notwithstanding any state constitution, law, or regulation. *See* 12 U.S.C. 3803.

(b) *Applicable regulations.* OTS identifies §§ 560.35 and 560.210 as appropriate and applicable for state housing creditors. All other OTS regulations are not identified, and are inappropriate and inapplicable for state housing creditors. State housing creditors engaged in credit sales should read the term ''loan'' as ''credit sale'' wherever applicable in applying these regulations.

PART 590—PREEMPTION OF STATE USURY LAWS

3. The authority citation for part 590 continues to read as follows:

Authority: 12 U.S.C. 1735f–7a.

4. Revise the section heading and paragraph (f)(4) in § 590.4 to read as follows:

§ 590.4 Federally-related residential manufactured housing loans—consumer protection provisions.

* * * * *

(f) * * *

(4) To the extent that applicable state law does not provide for a lower charge or a longer grace period, a late charge on any installment not paid in full on or before the 15th day after its scheduled or deferred due date may not exceed five percent of the unpaid amount of the installment.

* * * * *

PART 591—PREEMPTION OF STATE DUE-ON-SALE LAWS

5. The authority citation for part 591 is revised to read as follows:

Authority: 12 U.S.C. 1464 and 1701j–3.

6. Revise § 591.2(n) to read as follows:

§ 591.2 Definitions.

* * * * *

(n) *Reverse mortgage* means an instrument that provides for one or more payments to a homeowner based on accumulated equity. The lender may make payment directly, through the purchase of an annuity through an insurance company, or in any other manner. The loan may be due either on a specific date or when a specified event occurs, such as the sale of the property or the death of the borrower.

* * * * *

Dated: September 20, 2002.

[63] Pub. L. No. 103–325 (1994), 108 Stat. 2160, amending the Truth in Lending Act, 15 U.S.C. 1601 *et seq.* The reference to HOEPA was not included in the initial regulatory flexibility analysis.

[64] One commenter argued that the initial regulatory flexibility analysis incorrectly listed part 590 as an overlapping or duplicative provision because 12 U.S.C. 3805 states that the consumer protections in section 501(c)(1) of DIDMCA do not apply to alternative mortgage transactions under AMTPA. State housing creditors, however, may rely on state law rather than AMTPA for authority to make alternative mortgage transactions. If they do, they may assert preemption under section 501 under DIDMCA.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 02–24407 Filed 9–25–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE171; Special Conditions No. 23–128–SC

Special Conditions: Eclipse Aviation Corporation, Model 500; Fire Extinguishing System for Aft Mounted Engine Installations.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Eclipse Aviation Corporation, Model 500 airplane. This airplane will have a novel or unusual design feature(s) associated with aft mounted turbine engines. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Lowell Foster, FAA, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust Street, Kansas City, Missouri 64106, 816–329–4111.

SUPPLEMENTARY INFORMATION:

Background

On July 12, 2001, Eclipse Aviation Corporation applied for a type certificate for their new Model 500 airplane.

The Model 500 design includes turbine engines mounted aft on the fuselage, which means early visual detection of engine fire is precluded. The applicable existing regulations do not require fire extinguishing systems for engines. Aft mounted turbine engine installations, along with the need to protect such installed engines from fires, were not envisioned in the development of part 23; therefore, a special condition regarding fire protection for the engines of the Model 500 is required.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Eclipse Aviation Corporation must show that the Eclipse Model 500 meets the following:

(1) Applicable provisions of 14 CFR part 23, effective December 18, 1964, as amended by Amendments 23–1 through 23–54 (September 14, 2000).

(2) Part 34 of the Federal Aviation Regulations effective September 10, 1990, plus any amendments in effect on the date of type certification.

(3) Part 36 of the Federal Aviation Regulations effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect on the date of type certification.

(4) Noise Control Act of 1972.

(5) Special conditions that are not relevant to these special conditions;

(6) Exemptions, if any;

(7) Equivalent level of safety findings, if any; and

(8) Special conditions adopted by this rulemaking action.

In addition to the applicable airworthiness regulations and special conditions, the Model 500 must comply with the part 23 fuel vent and exhaust emission requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certifications basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The Model 500 will incorporate the following novel or unusual design features:

Turbine engines mounted on the aft of the fuselage. Aft mounted turbine engine installations need to be protected from fire since early visual detection of engine fires is not possible. This special condition covers a fire extinguishing system for the engines of the Model 500.

Discussion of Comments

Notice of proposed special conditions No. 23–01–04–SC–A for the Eclipse Model 500 airplanes was published on January 29, 2002 (67 FR 4215). On June 17, 2002, we published an amended notice of proposed special conditions (67 FR 46927). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Eclipse Model 500 airplane. The engine installation used in the Model 500 does not utilize additional engine compartments other than those addressed in the special conditions. Should Eclipse Aviation Corporation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the Eclipse Model 500 airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Eclipse Aviation Model 500 airplane.

Engine Fire Extinguishing System

(a) Fires originating in combustor, turbine, and tailpipe sections of the engine installation which contain lines or components carrying flammable fluids must either:

(1) Be demonstrated at critical conditions to be controllable by test or a combination of test or analysis; or

(2) a fire extinguishing system must serve each engine compartment.

(b) If a fire extinguishing system is installed, the system must comply with the following requirements:

(1) The system must serve each engine compartment;

(2) The system, the quantity of the extinguishing agent, the rate of discharge, and the discharge

distribution must be adequate to extinguish fires. An individual ''one shot'' system may be used; and

(3) For a nacelle, the system must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

(c) If a fire extinguishing system is installed, fire extinguishing agents must meet the following requirements:

(1) Be capable of extinguishing flames emanating from any burning of fluids or other combustible materials in the area protected by the fire extinguishing system;

(2) Have thermal stability over the temperature range likely to be experienced in the compartment in which they are stored; and

(3) If any toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid or vapors from entering any personnel compartment even though a defect may exist in the extinguishing system.

(d) If fire extinguishing agents are used, the agent containers must meet the following requirements:

(1) Have a pressure relief to prevent bursting of the container by excessive internal pressures;

(2) The discharge end of each discharge line from a pressure relief connection must be located so the discharge of the fire-extinguishing agent would not damage the airplane. The line must also be located or protected to prevent clogging caused by ice or other foreign matter;

(3) A means must be provided for each fire extinguishing agent container to indicate that the container has discharged or that the charging pressure is below the established minimum necessary for proper functioning;

(4) The temperature of each container must be maintained, under intended operating conditions, to prevent the pressure in the container from falling below that necessary to provide an adequate rate of discharge, or rising high enough to cause premature discharge; and

(5) If a pyrotechnic capsule is used to discharge the fire extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

(e) If a fire extinguishing system is installed, system materials must meet the following requirements:

(1) No material in any fire extinguishing system may react chemically with any extinguishing agent so as to create a hazard; and

(2) Each system component in an engine compartment must be fireproof.

Issued in Kansas City, Missouri on September 11, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–24449 Filed 9–25–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–220–AD; Amendment 39–12893; AD 2002–19–13]

RIN 2120–AA64

Airworthiness Directives; Certain Airplanes Originally Manufactured by Lockheed

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain airplanes originally manufactured by Lockheed for the military as the P2V. This action requires, among other actions, repetitive dye penetrant and detailed inspections to detect cracks in certain areas located on the left- and right-side lower wing surface between the fuselage and inboard engine nacelle; repetitive detailed inspections of adjacent areas; and repair, if necessary. This action also requires operators to submit a report of the initial inspection findings. This action is necessary to detect and correct stress-related cracking on the left- and right-side lower wing surface between the fuselage and inboard engine nacelle, which could result in structural failure of the wings and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective October 1, 2002.

Comments for inclusion in the Rules Docket must be received on or before November 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–220–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–220–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Denver Aircraft Certification Office (ACO), FAA, 26805 E. 68th Avenue, Room 214, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Roger Caldwell, Aerospace Engineer, ANM–100D, FAA, Denver ACO, 26805 E. 68th Avenue, Room 214, Denver, Colorado, 80249–6361; telephone (303) 342–1086; fax (303) 342–1088.

SUPPLEMENTARY INFORMATION: The FAA has received reports of extensive cracking found on the left- and right-side lower wing surface between the fuselage and inboard engine nacelle on certain airplanes originally manufactured by Lockheed that, in some cases, are used for the special purpose of forest and wildlife conservation (fighting fires). The cracking generally started from the fuel tank inspection cutouts and access holes (panels 53, and 151 through 153 inclusive) in a chordwise direction. Such cracking may be caused by the age of the airplanes and high stresses that occur during fire-fighting missions. Such cracking, if not detected and corrected, could result in structural failure of the wings and consequent loss of control of the airplane.

FAA's Determination

We have determined that repetitive dye penetrant and detailed inspections of the left- and right-side lower wing surface between the fuselage and inboard engine nacelle, and repetitive detailed inspections of adjacent areas are necessary to ensure that cracks will be detected, and corrective action taken (before further flight), to preclude crack growth to a size that would create an unacceptable risk of structural failure.

Based on the reports of cracking, the required inspections focus on the lower wing surface area surrounding the access holes. The identified method of inspection is considered adequate to detect any cracking in those areas. Also, based on the reports of cracking, and considering the loading environment the affected airplanes may be subjected to in a fire-fighting mission, we have determined that an initial dye penetrant inspection should be performed within

5 days or 50 flight cycles after the effective date of this AD, depending on the repair configuration of the airplane, and that a detailed inspection should be performed within 5 days after the effective date of this AD.

We also have determined that operators need to submit a report of the initial inspection findings to us. The intent of these required inspection reports is to enable us to determine how widespread such cracking problems may be in the affected fleet. Based on the results of these reports, further corrective action may be warranted.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes originally manufactured by Lockheed of the same type design that, in some cases, are used for the special purposes of forest and wildlife conservation (fighting fires), this AD is being issued to detect and correct stress-related cracking on the left- and right-side lower wing surface between the fuselage and inboard engine nacelle, which could result in structural failure of the wings and consequent loss of control of the airplane. This AD requires repetitive dye penetrant and detailed inspections to detect cracks in certain areas located on the left- and right-side lower wing surface between the fuselage and inboard engine nacelle; repetitive detailed inspections of adjacent areas; and repair, if necessary. This AD also requires ensuring that the surfaces are thoroughly cleaned and dried before doing any dye penetrant inspection, and free of contaminants, paint, and other coatings that could prevent dye penetrant from entering discontinuities. This AD also requires that operators submit a report of the initial inspection findings to the FAA.

Interim Action

This is considered to be interim action until final action is identified, at which time we may consider further rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–220–AD.'' The postcard will be date stamped and returned to the commenter.

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.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

2002–19–13 Airplanes Originally Manufactured by Lockheed: Amendment 39–12893. Docket 2002–NM–220–AD.

Applicability: All of the following airplanes, certificated in any category:

Aero Union Corporation Model SP–2H (P2V–7) airplanes, Type Certificate Data Sheet (TCDS) No. A24NM, Revision 0;

Central Air Service, Inc., Model SP–2H (P2V–7) airplanes, TCDS No. A40CE, Revision 0;

Evergreen Air Center Model SP–2H (identified on TCDS as ''2P–2H (P2V–7)'') airplanes, TCDS No. A1RM, Revision 2;

Hawkins and Powers Aviation, Inc., Model SP–2H (identified on TCDS as ''HP–P2V–7'') airplanes, TCDS No. A34NM, Revision 0;

Minden Air Corporation Model SP–2H (P2V–7) airplanes, TCDS No. A36NM, Revision 2;

Neptune Aviation Service, Inc., Model SP–2H (P2V–7) airplanes, TCDS No. A15SW, Revision 1; and

U.S. Department of Agriculture Model SP–2E (P2V–5F) airplanes, TCDS No. A17EA, Revision 2.

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 (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct stress-related cracking on the left- and right-side lower wing surface between the fuselage and inboard engine nacelle, which could result in structural failure of the wings and consequent loss of control of the airplane, accomplish the following:

Compliance Times for Inspections

(a) The inspection requirements of this AD must be done at the times listed in the following table:

TABLE—COMPLIANCE TIMES FOR INSPECTIONS

Airplanes	Initial compliance time	Repetitive interval	Required actions
For airplanes on which a repair has been done to correct cracking on the lower wing surface.	Within 50 flight cycles after the effective date of this AD.	Every 50 flight cycles	Actions specified in paragraph (b) of this AD.
For airplanes on which a repair has NOT been done to correct cracking on the lower wing surface.	Within 5 days after the effective date of this AD.	Every 50 flight cycles	Actions specified in paragraph (b) of this AD.
For all airplanes	Within 5 days after the effective date of this AD.	Every 5 flight cycles	Action specified in paragraph (c) of this AD.

Dye Penetrant and Detailed Inspections

(b) Do the actions specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Do a dye penetrant inspection to detect cracks in the areas specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this AD, located on the left- and right-side lower wing surface between the fuselage and inboard engine nacelle. Ensure that the surfaces are thoroughly cleaned and dried before doing any dye penetrant inspection, and free of contaminants, paint, and other coatings that could prevent dye penetrant from entering discontinuities. Further guidance on dye penetrant inspections is provided in Chapter 5, Section 5 of Advisory Circular (AC) 43.13–1B.

(i) On the external surface within 3 inches from the edge of all access holes.

(ii) On the internal surface or doubler within 1 inch from the edge of all access holes.

(2) Do a detailed inspection to detect cracks of the areas adjacent to those identified in paragraph (b)(1) of this AD.

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

(c) Do a detailed inspection to detect cracks of the surface around all access holes located on the left- and right-side external lower wing surface between the fuselage and the inboard engine nacelle, and adjacent areas.

Corrective Action

(d) If any crack is detected during any inspection required by paragraph (b) or (c) of this AD, before further flight, repair per a method approved by the Manager, Denver Aircraft Certification Office (ACO), FAA.

Reporting Requirement

(e) Submit a report of inspection findings (both positive and negative) to the Manager, Denver ACO, FAA, 26805 E. 68th Avenue, Room 214, Denver, Colorado 80249–6361; fax (303) 342–1088; at the applicable time specified in paragraph (e)(1) or (e)(2) of this AD. (The report must include the inspection results, a description of any discrepancy found (e.g., crack length and location) and any repair done on the lower wing surface if applicable, and airplane serial number.) 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 initial inspections required by paragraphs (b)(1), (b)(2), and (c) of this AD are accomplished after the effective date of this AD: Submit the report within 10 days after performing those initial inspections.

(2) For airplanes on which the initial inspections required by paragraphs (b)(1), (b)(2), and (c) of this AD have been accomplished before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Denver 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, Denver ACO.

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

Special Flight Permits

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

Effective Date

(h) This amendment becomes effective on October 1, 2002.

Issued in Renton, Washington, on September 20, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–24415 Filed 9–23–02; 12:24 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–235–AD; Amendment 39–12894; AD 2002–19–14]

RIN 2120–AA64

Airworthiness Directives; Lockheed C–130A Airplanes, Type Certificated in the Restricted Category

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Lockheed C–130A airplanes, type certificated in the restricted category. This action requires repetitive inspections to detect cracks at

fastener holes in the left- and right-side lower skin panels and stringers of the center wing between wing stations 41.0 and 71.0; and replacement of any cracked part with a new part, or repair and inspections at new intervals. This action is necessary to detect and correct fatigue cracking in the left- and right-side lower skin panels and stringers of the center wing, which could result in structural failure of the wings and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 26, 2002.

Comments for inclusion in the Rules Docket must be received on or before November 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002-NM–235-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002-NM–235-AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: William Herderich, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6082; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: On June 17, 2002, while dropping retardant on a fire near Walker, California, a United States Department of Agriculture (USDA) Forest Service Model C–130A airplane was involved in an accident, resulting from the structural failure of the center wing. Investigation revealed fatigue cracking in the lower skin panels and stringers of the center wing. The cause of such fatigue cracking has been attributed to the age, time-in-service, and flight cycles of the airplane. Such fatigue cracking, if not detected and corrected, could result in structural failure of the wings and consequent loss of control of the airplane.

FAA's Determination

We have determined that extensive cracking (multiple-site damage (MSD)) of the left- and right-side lower skin panels of the center wing between wing stations 41.0 and 71.0 and the front and rear spars, is likely to occur on Lockheed C–130A airplanes, type certificated in the restricted category. Repetitive inspections of these areas are necessary to ensure that cracks will be detected, and corrective action taken, to preclude crack growth to a size that would create an unacceptable risk of structural failure.

MSD is characterized by the simultaneous presence, at multiple locations, of relatively small fatigue cracks that have the same geometry and stress level. The presence of MSD is usually an indicator of normal fatigue wearout, as opposed to any kind of an anomaly (*e.g.*, material or manufacturing defect). The length of critical MSD cracks is typically much smaller than that of a single, isolated critical crack.

Based on the reports of cracking, we have determined that the repetitive inspections required by this AD will focus on fastener holes penetrating the lower skin panels and stringers of the center wing in the affected areas. Due to the nature of MSD cracking, the cracks that will need to be detected are very small, perhaps less than 0.10 inch in length. While inspection methodologies exist that can be used to detect cracks of this size, we are currently unaware of any for Lockheed C–130A airplanes, type certificated in the restricted category. Therefore, owners and operators must submit inspection procedures and repetitive inspection intervals to the Manager, Atlanta Aircraft Certification Office (ACO), FAA. The inspection procedures must be sufficiently reliable to determine the location and orientation of cracks that are very small, perhaps less than 0.10 inch in length. A potential inspection method would be to develop an inspection procedure using a bolt hole eddy current technique, develop a reference standard to calibrate the test instruments, and then use the developed inspection procedures and calibrated instruments to detect cracks. Other potential inspection methods include eddy current, eddy current arrays, and ultrasonic techniques. Certain types of inspections, such as a radiographic, are inadequate to detect small crack lengths. Because of the potential catastrophic nature of this cracking, the initial inspection must be performed within 4 days after the effective date of this AD.

Repetitive inspections must be performed at intervals that prevent crack growth from exceeding the minimum residual strength required to support ultimate load on the affected structure. These repetitive inspection intervals must be based on a damage tolerance assessment of the skin panels and stringers. Guidance for damage tolerance procedures may be found in Advisory Circular (AC) 25.571–1C, dated April 29, 1998.

If any crack is detected during any inspection, operators must replace the cracked part with a new part; or repair and inspect at new intervals based on a damage-tolerance assessment of the wing panels and stringers, per a method approved by the Atlanta ACO. The repair must include a damage tolerance assessment as noted above, in addition to analysis showing static strength capability in compliance with the certification basis of the airplane. In the case of the repair, determination of new inspection intervals based on a damage-tolerance assessment of the repaired wing panels and stringers is necessary, because the repair may alter the inspection intervals that are necessary in order to detect cracks before the structure fails. Conversely, in the case of a replacement with a new part, the inspection intervals that apply to the unrepaired structure continue to be applicable.

In addition, operators must report the results of inspections to the Atlanta ACO. As a minimum, the report must include the following information:

- Airplane manufacturer's serial number(s);
- Time-in-service of airplane;
- Applicable type certificate data sheet;
- Description of usage under which the restricted category was issued (see 14 CFR part 21.25(b));
- Part numbers and time-in-service of damaged and undamaged parts; and
- Diagram(s) showing the location and orientation of cracks, and if available, the length of cracks.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Lockheed C–130A airplanes, type certificated in the restricted category, this AD is being issued to detect and correct fatigue cracking in the left- and right-side lower skin panels and stringers of the center wing, which could result in structural failure of the wings and consequent loss

of control of the airplane. This AD requires repetitive inspections to detect cracks at fastener holes in the left- and right-side lower skin panels and stringers of the center wing between wing stations 41.0 and 71.0; and replacement of any cracked part with a new part, or repair and inspections at new intervals. This AD also requires operators to submit a report of the inspection findings to the FAA.

Interim Action

This is considered to be interim action until final action is identified, at which time we may consider further rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–235–AD.'' The postcard will be date stamped and returned to the commenter.

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.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

2002–19–14 Lockheed C–130A Airplanes: Amendment 39–12894. Docket 2002–NM–235–AD.

Applicability: Including, but not limited to, all of the following Lockheed C–130A airplanes, type certificated in the restricted category:

Central Air Service, Inc., Model C–130A airplanes, Type Certificate Data Sheet (TCDS) No. A39CE, Revision 2;

Hawkins & Powers Aviation, Inc., Model HP–C–130A airplanes, TCDS No. A30NM, Revision 1;

Hemet Valley Flying Service Model C–130A airplanes, TCDS No. A31NM, Revision 0;

LeSEA Model C–130A airplanes, TCDS No. A34SO, Revision 0;

Snow Aviation International, Inc., Model C–130A airplanes, TCDS No. TQ3CH, Revision 1;

United States Department of Agriculture (USDA) Forest Service Model C–130A airplanes, TCDS No. A15NM, Revision 4;

Western International Aviation, Inc., Model C–130A airplanes, TCDS No. A33NM, Revision 0; and

Any other surplus Military C–130A airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the left- and right-side lower skin panels and stringers of the center wing, which could result in structural failure of the wings and consequent loss of control of the airplane, accomplish the following:

Inspection

(a) Within 4 days after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA.

(1) Do an inspection to detect cracks at fastener holes in the left- and right-side lower skin panels and stringers of the center wing between wing stations 41.0 and 71.0. The inspection procedures must be sufficiently reliable to determine the location and orientation of cracks that are very small, perhaps less than 0.10 inch in length.

(2) Develop repetitive inspection intervals that prevent crack growth from exceeding the

minimum residual strength required to support ultimate load on the affected structure. The repetitive inspection intervals must be based on a damage-tolerance assessment of the wing panels and stringers and be approved by the Manager, Atlanta ACO. Guidance for damage tolerance procedures may be found in Advisory Circular (AC) 25.571–1C, dated April 29, 1998. Thereafter, do the inspection approved per paragraph (a)(1) of this AD at the intervals approved per this paragraph.

(b) If any crack is detected during any inspection required by this AD, before further flight, do the action(s) specified in paragraph (b)(1) or (b)(2) of this AD.

(1) Replace the cracked part with a new part and continue to inspect per paragraph (a) of this AD.

(2) Repair and inspect at new intervals based on a damage-tolerance assessment of the wing panels and stringers, per a method approved by the Manager, Atlanta ACO. The repair must include a damage-tolerance assessment as noted above, in addition to an analysis showing static strength capability in compliance with the certification basis of the airplane. Guidance for damage tolerance procedures may be found in Advisory Circular (AC) 25.571–1C, dated April 29, 1998.

Reporting Requirement

(c) Within 10 days after accomplishing the initial inspection required by paragraph (a)(1) of this AD, submit a report of the inspection results (both positive and negative) to the Manager, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; fax (770) 703–6097. 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. As a minimum, the report must include:

(1) Airplane manufacturer's serial number(s);

(2) Time-in-service of airplane;

(3) Applicable TCDS;

(4) Description of usage under which the restricted category was issued (see 14 CFR part 21.25(b));

(5) Part numbers and time-in-service of damaged and undamaged parts; and

Note 2: Reports of ''rehabed'' wings indicate that wing panels and stringers may have been replaced.

(6) Diagram(s) showing the location and orientation of cracks, and if available, the length of cracks.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Effective Date

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

Issued in Renton, Washington, on September 20, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–24416 Filed 9–23–02; 12:24 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AWP–4]

Establishment of Class D Airspace; Henderson Airport; Las Vegas, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class D surface area at Henderson Airport in Law Vegas, NV extending upward from the surface to, but not including, 4,000 feet MSL within a 4.1-mile radius of Henderson Airport, excluding Las Vegas Class B airspace. A review of air traffic operations and procedures at Henderson Airport has indicated the need for establishment of a Class D surface area at this location.

EFFECTIVE DATE: January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Airspace Specialist, Airspace Branch, AWP–520.11, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone number (310) 725–6611.

SUPPLEMENTARY INFORMATION:

Background

On July 23, 2002, the FAA published a notice (67 FR 48064) proposing to establish Class D surface area airspace at Henderson Airport in Las Vegas, Nevada. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal to the FAA. In the ensuing comment period, which closed on September 6, 2002, the FAA received no comments on the proposed action.

The Rule

This action amends 14 CFR part 71 by establishing Class D airspace at Henderson Airport extending from the surface up to, but not including, 4,000 feet above Mean Seal Level (MSL) within a 4.1-mile radius of Henderson Airport, excluding Las Vegas Class B airspace. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, through September 15, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in that Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation

Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP CA D Henderson Airport, NV [New]

Henderson Airport, NV

(Lat. 35°58′35″ N, long, 115°07′58″ W)

That airspace extending upward from the surface to, but not including, 4,000 feet MSL within a 4.1-mile radius of Henderson Airport, excluding Las Vegas Class B airspace. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on September 16, 2002.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 02–24447 Filed 9–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 4138]

RIN 1400–AB22

Visas: Documentation of Immigrants—International Broadcasters

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule adopts as final the Department's interim rule which created a new special immigrant visa classification for certain international broadcasting employees of the International Broadcasting Bureau of the Broadcasting Board of Governors or grantees of that Board.

Effective Date: This rule takes effect on September 26, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520-0106.

SUPPLEMENTARY INFORMATION:

What Is the Authority for This Rule?

On March 19, 2001, the Department published an interim rule [66 FR 15349] that implemented Public Law 106–536 (November 22, 2000). This Act created a new class of special immigrants under INA 203(b)(4) for international broadcasting employees. Such aliens must be seeking to enter the United States to work as a broadcaster for the International Broadcasting Bureau of the Broadcasting Board of Governors, or for a grantee of the Broadcasting Board of Governors. The alien's accompanying spouse and child(ren) are entitled to derivative status. The law limits the number of immigrants in this category to 100 annually, excluding spouses and children for whom there is no numerical limitation.

Were Comments Solicited in the Department's Interim Rule?

The Department's interim rule solicited comments, however, no comments were received.

Final Rule

Since no comments were received, no change to the interim rule is required and the Department does not believe it is necessary to reprint the regulation in this final rule.

PART 42—[AMENDED]

1. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104.

2. Accordingly, the Department adopts as final interim rule 66 FR 15349, as published in the **Federal Register** on March 19, 2001.

Dated: September 20, 2002.

George Lannon,

Acting Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–24471 Filed 9–25–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1505–AA87

Financial Crimes Enforcement Network; Anti-Money Laundering Requirements—Correspondent Accounts for Foreign Shell Banks; Recordkeeping and Termination of Correspondent Accounts for Foreign Banks

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Treasury), through the Financial Crimes Enforcement Network (FinCEN), is issuing this final rule to implement new provisions of the Bank Secrecy Act that: Prohibit certain financial institutions from providing correspondent accounts to foreign shell banks; require such financial institutions to take reasonable steps to ensure that correspondent accounts provided to foreign banks are not being used to indirectly provide banking services to foreign shell banks; require certain financial institutions that provide correspondent accounts to foreign banks to maintain records of the ownership of such foreign banks and their agents in the United States designated for service of legal process for records regarding the correspondent account; and require the termination of correspondent accounts of foreign banks that fail to comply with or fail to contest a lawful request of the Secretary of the Treasury (Secretary) or the Attorney General of the United States (Attorney General).

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

FOR FURTHER INFORMATION CONTACT: Office of the Chief Counsel (FinCEN), (703) 905–3590; Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480, or Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Public Law 107–56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which is codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Two of these provisions became effective on December 26, 2001.

First, section 313(a) of the Act added a new subsection (j) to 31 U.S.C. 5318 that prohibits a ''covered financial institution'' from providing ''correspondent accounts'' in the United States to foreign banks that do not have a physical presence in any country (foreign shell banks). Section 313(a) also requires those financial institutions to take reasonable steps to ensure that correspondent accounts provided to foreign banks are not being used to provide banking services indirectly to foreign shell banks.

Second, section 319(b) of the Act added a new subsection (k) to 31 U.S.C. 5318 that requires any covered financial institution that provides a

correspondent account to a foreign bank to maintain records of the foreign bank's owners and to maintain the name and address of an agent in the United States designated to accept service of legal process for the foreign bank for records regarding the correspondent account. Subsection (k) also authorizes the Secretary and the Attorney General to issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and to request records relating to such account, including records maintained outside the United States relating to the deposit of funds into the foreign bank. If a foreign bank fails to comply with or to contest the summons or subpoena, any covered financial institution with which the foreign bank maintains a correspondent account must terminate the account upon notice from the Secretary or the Attorney General.

Under the Act, Treasury is authorized to interpret and administer these provisions. On November 20, 2001, Treasury issued Interim Guidance [1] to banks, savings associations, and other depository institutions to assist them in meeting their compliance obligations under sections 5318(j) and (k).[2] The Interim Guidance included definitions of key terms in sections 5318(j) and (k) and a model certification that depository institutions were authorized to use as an interim means to assist them in meeting their obligations related to dealing with foreign shell banks under section 5318(j) and recordkeeping under section 5318(k).

On December 28, 2001, Treasury published for comment a notice of proposed rulemaking (NPRM) [3] to codify the Interim Guidance, with some modifications, as regulatory standards, and proposed to apply the requirements of these two provisions to securities brokers and dealers in the same manner as they apply to depository institutions.[4] The NPRM also carried forward from the Interim Guidance, with some modifications, the model certification that covered financial institutions may use to assist them in meeting the requirements of sections 5318(j) and (k), and that would provide a covered financial institution with a safe harbor for purposes of compliance with those sections. Treasury also proposed that covered financial institutions must verify the information provided by a foreign bank, or otherwise relied upon for purposes of sections 5318(j) and (k), every two years or at any time a covered financial institution has reason to believe that the previously provided information was no longer accurate. The NPRM included a model recertification that would provide a covered financial institution with a safe harbor in connection with the updating of previously provided information. The NPRM also provided special rules and safe harbors for a covered financial institution that, consistent with the Interim Guidance and the NPRM, requests information from a foreign bank before the effective date of the final rule and receives such information not later than the date that is 90 days after the publication of the final rule.

As an administrative matter, the NPRM proposed to codify its provisions in a new part 104 of title 31 of the Code of Federal Regulations.[5] Treasury has since determined to codify the final rule with Treasury's other BSA regulations in part 103.

II. Summary of Comments

Treasury received 23 comments regarding the proposed rule, including ten from financial services trade associations, four from U.S. financial institutions, four from foreign financial institutions, three from regional development banks, and two from members of Congress. Although comments were received on many issues, by far the most significant issues addressed by the commenters were the breadth of the definition of ''correspondent account'' in the NPRM and the treatment of foreign branches of U.S. depository institutions as covered financial institutions. Other commenters raised issues concerning the means for obtaining and using the certification, requirements for termination of accounts, and certain other definitions. These issues are discussed below in the section-by-section analysis.

III. Section-by-Section Analysis

A. Section 103.175 Definitions

Certification and Recertification

Treasury has included ''certification'' and ''recertification'' as defined terms in the final rule for ease of reference. These terms refer to the certification and recertification forms in appendices A and B to Subpart I of 31 CFR Part 103. These forms have been revised consistent with the substantive changes in regulatory text. In addition, in response to comments, the certification appended to the final rule includes the definition of the term ''foreign bank.''

Correspondent Account

The term ''correspondent account'' is defined in the Act for sections 313 and 319(b) by reference to the definition in section 311. The definition in the NPRM was taken verbatim from section 311 (but made applicable to ''foreign banks'' rather than ''foreign financial institutions'').[6] More comments dealt with this definition than any other single subject. Every comment letter from the private sector regarding this topic took the position that the definition in the proposed rule was too broad. The commenters stated that this definition, and particularly the clause ''or handle other transactions related to such bank,'' extends well beyond the commonly understood meaning of the term [7] (and even beyond the meaning of the term ''account''), to bring within its scope numerous types of accounts, as well as many types of transactions that don't involve an account as such, and that pose little or no risk of money laundering. Some commenters stated that, although such a broad definition may be appropriate for section 313, which prohibits correspondent accounts with foreign shell banks, the definition should be refined and narrowed for other provisions of the Act, including section 319(b). The commenters urged that it could actually be counterproductive to apply a broad statutory definition to all provisions of the Act dealing with correspondent accounts, in that it would require

[1] 66 FR 59342 (Nov. 27, 2001).

[2] Treasury issued the interim guidance after consultation with the staffs of the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Department of Justice. Treasury also consulted with staffs of these agencies in preparing the NPRM defined below and this final rule.

[3] 66 FR 67460 (Dec. 28, 2001).

[4] When issuing the Interim Guidance, Treasury deferred addressing the compliance obligations of securities brokers and dealers with respect to the requirements of sections 5318(j) and (k), because the Act requires Treasury to define by regulation, after consultation with the SEC, the types of accounts maintained by brokers and dealers for foreign banks that are similar to correspondent accounts that depository institutions maintain for foreign banks.

[5] The proposed sections were 104.10 (Definitions); 104.40 (Records concerning owners of foreign banks and agents and prohibition on correspondent accounts for foreign shell banks); 104.60 (Summons or subpoena of foreign bank records); and 104.70 (Termination of correspondent relationship).

[6] The NPRM defined ''correspondent account'' to mean ''an account established to receive deposits from, make payments on behalf of a foreign bank, or handle other financial transactions related to such bank.''

[7] A correspondent account is commonly understood to mean a deposit account established by one bank for another bank to receive deposits and make payments. *See* Federal Reserve Regulation O (12 CFR 215.21(c); Dictionary of Finance and Investment Terms, John Downes and Jordan Elliot Goodman (5th ed. 1998).

covered financial institutions to devote limited resources to focus on a broad range of accounts and transactions that have little susceptibility to money laundering, thereby reducing the attention that can be given to the types of accounts and activities presenting more serious risks.

Accordingly, many commenters urged Treasury to narrow the definition so as to exclude transactions and accounts that do not present a meaningful risk of money laundering or terrorist financing. Among the types of transactions and accounts that the commenters sought to exclude from the definition are the following:

(a) Transactions in which a foreign bank is acting as principal and not for a customer (as is often the case with overnight and short-term deposits, foreign exchange, derivatives, and other securities transactions), and accounts used exclusively to facilitate such transactions. The primary argument for this exclusion is that if there are no customer funds contained in accounts, then the accounts are functionally no different than accounts maintained by covered financial institutions for any nonfinancial company and would seem to pose a minimal risk for money laundering.

(b) Accounts for foreign banks established for a specific purpose through which funds are received and disbursed under limited defined conditions to identified parties, such as escrow, corporate trust, paying agency, custody, and clearing accounts.

(c) Accounts for foreign banks for which ownership has been subject to close scrutiny by a credible authority. Under this approach, accounts for foreign banks that are publicly traded, are qualified intermediaries (as designated by the IRS), are subject to the laws of FATF member countries, or are permitted to hold pension plan assets under regulations of the Department of Labor could be exempted from this requirement, on the theory that such foreign banks are highly unlikely to present a significant risk of money laundering.

Other commenters noted that covered financial institutions may conduct occasional, isolated transactions with a foreign bank with which they have no established relationship. They sought clarification as to whether the term ''correspondent account'' includes infrequent transactions with foreign banks that do not involve an ''account'' relationship in any customary sense, and asked that Treasury set forth some means of determining the extent to which an isolated or occasional transaction would not constitute a ''correspondent account'' under these provisions.

A Congressional commenter stated that the regulations should define the term ''correspondent account'' ''broadly to maximize the scope of the protections provided by the Act,'' and to use a single definition in all the regulations to be issued and then to specify for each section the particular subset of correspondent accounts being addressed.

Treasury believes that, for the purposes of sections 313 and 319(b), the broad statutory definition is appropriate. Congress addressed shell banks separately in section 313, determining that they pose such a significant risk for money laundering that an absolute ban on correspondent accounts is justified. Section 319(b) requires that covered financial institutions maintain records regarding the ownership and an agent for service of process of any foreign bank for which it maintains a correspondent account. There is no clear justification for limiting the requirement to only certain foreign banks or to only those foreign banks for which certain types of correspondent accounts are maintained. Moreover, the principal argument asserted for adopting a more restrictive definition is to reduce the compliance burden that results from a broad definition, so that industry compliance resources may be focused on areas presenting a potentially greater risk. With respect to this rulemaking, however, covered financial institutions will generally achieve compliance with the requirements of both sections 313 and 319(b) by obtaining one certification from the foreign bank. Thus, requiring the ownership and process agent information in each case where the covered financial institution must already obtain the foreign bank's certification regarding its shell bank status should impose little additional burden on the covered financial institution. Accordingly, Treasury does not believe that the costs of complying with section 319(b) for all correspondent accounts outweigh the risks of excluding from the scope of coverage of section 319(b) foreign banks for which only certain types of accounts are maintained. Thus, for purposes of the final rule, Treasury is essentially retaining the proposed definition, with technical changes that clarify the definition. The final definition for purposes of these sections includes accounts for making ''other disbursements'' as well as payments ''on behalf of a foreign bank.'' No inference should be drawn from this determination concerning the appropriate definition of ''correspondent account'' for purposes of section 312 of the Act. [8]

Treasury is further clarifying the definition of ''correspondent account'' by defining the term ''account'' for this purpose. With respect to banks, section 311 of the Act provides that the term account ''(i) means a formal banking or business relationship established to provide regular services, dealings, and other financial transactions, and (ii) includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.'' Treasury believes that the use of the term ''regular'' in the definition requires an arrangement to provide ongoing services, and would generally exclude infrequent or occasional transactions. Inasmuch as section 311 specifically applies this definition of ''account'' for purposes of section 313, Treasury is modifying the final rule by adding this definition of ''account,'' for purposes of defining ''correspondent account.'' This results in a definition of ''correspondent account'' that includes any transaction account, savings account, asset account, or extension of credit maintained for a foreign bank, as well as any other relationship with a foreign bank to provide regular services, dealings, and other financial transactions. Treasury anticipates that most isolated or occasional transactions that a covered financial institution conducts with a foreign bank would not constitute a correspondent account for purposes of the final rule.[9]

The NPRM proposed the same definition of ''correspondent account'' for securities broker-dealers. After consultation with the Securities and Exchange Commission (SEC), Treasury is adopting the same definition of ''correspondent account'' for purposes of securities brokers' and dealers' compliance with sections 313 and 319(b). *See* 31 U.S.C. 5318A(e)(2). Treasury is taking this approach in order to ensure parity between different types of covered financial institutions and to treat functionally equivalent accounts in the same manner. Thus,

[8] Section 312 of the Act, which amends the BSA to add new subsection (i) to 31 U.S.C. 5318, requires financial institutions to establish due diligence policies, procedures and controls to detect and report money laundering through correspondent accounts and private banking accounts maintained for non-U.S. persons. *See* FinCEN; Due Diligence Anti-Money Laundering Programs for Certain Foreign Accounts, 67 FR 37736 (May 30, 2002).

[9] Treasury notes further that accounts maintained by foreign banks for covered financial institutions are not ''correspondent accounts'' subject to this regulation.

under the final rule, brokers and dealers must comply with these two sections with respect to any account they establish, maintain, administer, or manage in the U.S. for a foreign bank that permits the foreign bank to engage in securities transactions, funds transfers, or other financial transactions through that account. Such accounts would include, for example, the following, whether such accounts are for transactions by the foreign bank as principal or for its customers: (1) Accounts to purchase, sell, lend or otherwise hold securities; (2) prime brokerage accounts that consolidate trading done at a number of firms; (3) accounts for trading foreign currency; (4) various forms of custody accounts; (5) over-the-counter derivatives accounts; and (6) accounts for trading futures or commodity options, which would be maintained by broker-dealers that are dually registered as futures commission merchants.

Several commenters noted that section 319(b) refers to ''correspondent relationships'' and requested that the meaning of the term be clarified. The final rule defines the term ''correspondent relationship'' as having the same meaning as ''correspondent account'' for purposes of section 319(b).

Covered financial institution. The proposed definition of ''covered financial institution,'' which includes primarily depository institutions and securities broker-dealers, was essentially taken from the section 313 statutory definition,[10] but with the addition of foreign branches of insured banks. The inclusion of foreign branches of insured banks generated more comments than any issue other than the definition of ''correspondent account.'' Commenters cited, as reasons for their objections, the plain language of the statute, the history of BSA implementation, the anti-competitive impact, and a likely ineffective impact on preventing money laundering.

As for the plain language, commenters noted that section 313 of the Act provides that a covered financial institution shall not ''establish, maintain, administer, or manage a correspondent account *in the United States''* for a foreign shell bank and that any covered financial institution that establishes, maintains, administers, or manages a correspondent account *''in the United States* for a foreign bank'' must take reasonable steps to ensure that it is not used to indirectly provide banking services to foreign shell banks; and that section 319(b), which requires maintenance of records regarding foreign bank owners, applies to ''[a]ny covered financial institution which maintains a correspondent account *in the United States* for a foreign bank.'' (emphasis added in each case). These commenters urged that Congress' repeated use of the phrase ''in the United States'' shows a clear intent to limit the application of these provisions to correspondent accounts maintained at offices in the U.S. Moreover, commenters noted that many accounts maintained by foreign branches of U.S. banks for foreign banks are not in fact established, maintained, administered or managed in the U.S.

Furthermore, commenters pointed out that to impose this requirement on foreign branches of U.S. financial institutions would place the U.S. institutions at a distinct competitive disadvantage with foreign banks in foreign countries, which would not be subject to the requirements imposed by this rule. If foreign banks wishing to maintain a correspondent account at the foreign branch of a U.S. bank must appoint an agent for service of process in the U.S., subject themselves to subpoena by U.S. authorities, submit information regarding their ownership, and make certifications about the use of their accounts, they are less likely to use the services of a U.S. bank's foreign branch. Commenters also pointed out that U.S. banks would be at a particular disadvantage with respect to foreign banks with U.S. branches. Such banks could offer their foreign bank customers access to the U.S. financial system through their non-U.S. offices without the need for such foreign bank customer to complete the certification or to appoint a process agent to accept subpoenas from U.S. authorities. This construction thus would not prevent foreign banks from gaining access to the U.S. financial system, but would more likely result in this occurring outside the due diligence process required of covered financial institutions.

In addition, commenters noted that historically, in implementing the BSA, Treasury has confined the scope of its coverage to entities and activities ''within the United States.'' In the current BSA rules, a foreign branch of a U.S. bank is included in the definition of a ''foreign bank'' [11] rather than in the definition of a ''bank,'' and, as such, is not subject to BSA requirements such as suspicious activity reporting. Similarly, foreign offices of securities broker-dealers are not subject to this requirement.[12] Others questioned whether it is appropriate or even permissible under general concepts of jurisdiction to require a foreign bank with no contacts with the U.S. (other than having an account with a foreign branch of a U.S. bank) to agree to be subject to subpoena authority and to appoint an agent for process. Commenters also noted that this construction could, in certain cases, require a foreign branch to be in conflict with local law, such as situations where it could be required to close an account with a foreign bank.

A Congressional commenter stated that including foreign branches of U.S. banks within the definition of ''covered financial institution'' is appropriate and is consistent with legislative intent.

Treasury has determined, based upon the plain language of the Act, as well as the policy considerations discussed above, that foreign branches of insured banks should not be included within the definition of ''covered financial institution,'' and, thus, that correspondent accounts for foreign banks that are clearly established, maintained, administered or managed only at foreign branches should not be subject to the final regulation. Of course, if such an account actually is established, maintained, administered, or managed in the United States, then it would be subject to the final rule. As a result of this determination, a foreign branch of an insured bank is treated as a ''foreign bank'' under the final rule, and any correspondent account maintained for it by a covered financial institution will be subject to the final rule. This means that insured banks will be required to take reasonable steps to ensure that such accounts they maintain for any of their foreign branches are not used to indirectly provide banking services to a foreign shell bank.

Although the Act does not define ''covered financial institution'' for purposes of section 5318(k), the NPRM proposed that the term be given the same meaning as the identical term in section 5318(j), which includes securities brokers and dealers. This was because both sections deal with anti-

[10] Section 5318(j) defines ''covered financial institution'' as ''a financial institution described in subparagraphs (A) through (G) of section 5312(a)(2).'' This includes (A) any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h))); (B) a commercial bank or trust company; (C) a private banker; (D) an agency or branch of a foreign bank in the United States; (E) a credit union; (F) a thrift institution; or (G) a broker or dealer registered with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). *See* 31 U.S.C. 5318(j)(1), 5312(a)(2). Covered financial institutions include, by virtue of the definition of ''insured bank,'' insured banks organized in U.S. Territories and Insular Possessions; the term also includes corporations acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*).

[11] 31 CFR 103.11(o).

[12] 31 CFR 103.19(a)(1), 67 FR 44048, 44052 (July 1, 2002).

money laundering efforts related to correspondent relationships between financial institutions and foreign banks, and to treat securities broker-dealers otherwise would be inconsistent with the statutory scheme and would not reflect a comprehensive approach to implementing the Act's money-laundering requirements. This definition is retained in the final rule.

As a result of Treasury's inclusion in the final rule of the BSA definition of the ''United States,'' branches of foreign banks in the U.S. Territories and Insular Possessions will be treated as ''covered financial institutions.'' In the NPRM, they fell within the definition of ''foreign banks.''

Foreign bank. The NPRM proposed to define a ''foreign bank'' as any organization that (i) is organized under the laws of a foreign country; (ii) engages in the business of banking; (iii) is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations; and (iv) receives deposits in the regular course of its business. The proposed definition excluded an agency or branch of a foreign bank located in the United States or an insured bank organized in a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, as those entities are ''''covered financial institutions' under the statute. In addition, the definition excluded a foreign central bank or foreign monetary authority that functions as a central bank, as well as certain other international financial institutions, including multinational development banks of which the U.S. is a member.

A Congressional commenter stated that this definition is too narrow, in that it includes the requirement that such an organization ''(iv) receives deposits in the regular course of its business.'' The commenter suggested that this may provide a loophole for an organization that is appropriately classified as a foreign shell bank but could evade the requirements of this section by not generally receiving deposits. Another commenter expressed the view that this definition may be too broad, in that it may include nonbank financial institutions such as investment companies, investment advisers, insurance companies, commodity pools and commodity trading advisers within the definition.

On further consideration, Treasury has determined to adopt the existing BSA definition of ''foreign bank.''[13] Treasury believes that the existing BSA definition, which defines ''foreign bank'' by reference to U.S. depository institutions (and includes foreign branches of U.S. banks), will generally include the institutions at which the statutory provisions are directed, is more precise, and will result in fewer interpretive issues. Treasury believes that adopting the current BSA definition of ''foreign bank'' for this regulation resolves the concerns of the commenters noted above, and will not require the exceptions contained in the NPRM for foreign central banks, foreign monetary authorities that function as central banks, and international financial institutions and regional development banks, since they clearly would not fall within this definition. Treasury thus confirms that the definition of foreign bank does not include any foreign central bank or monetary authority that functions as a central bank, or any international financial institution or regional development bank formed by treaty or international agreement.[14]

Foreign shell bank. The proposal defined ''foreign shell bank'' as a foreign bank that does not have a physical presence in any country. The definition in the final rule is unchanged.

Owner. The NPRM proposed to define ''owner'' as any ''large direct owner,'' ''indirect owner,'' or ''small direct owner,'' each of which was in turn defined. Although the definition as proposed was intended to reduce reporting burden, many commenters found the definition overly complicated, particularly considering that it must be interpreted by thousands of foreign banks, and suggested that it be simplified or clarified. Treasury agrees that a simpler definition is preferable. Accordingly, the final rule adopts, as a definition of owner, any person who, directly or indirectly, (i) owns, controls, or has power to vote 25 percent or more of any class of voting securities or other voting interests of a foreign bank, or (ii) controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of a foreign bank.

Treasury continues to believe that the 25 percent ownership threshold contained in the NPRM is appropriate based in part on the fact that section 312 of the Act amends the BSA to require that, as an element of enhanced due diligence, covered financial institutions take reasonable steps to ascertain the owners of certain foreign banks whose shares are not publicly traded.[15] As this requirement under section 312 applies only to foreign banks operating under licenses deemed to be of a high risk for money laundering, it is unreasonable to require the same level of disclosure regarding the ownership of the thousands of other foreign banks for which covered financial institutions maintain correspondent accounts that do not operate under high-risk licenses.[16] Similarly, foreign banks whose shares are publicly traded will not be required to report their owners.

For purposes of the definition of ''owner'' in the NPRM, ''person'' was defined as any individual, bank, corporation, partnership, limited liability company, or any other legal entity, except that members of the same family[17] shall be considered one person, and each family member who has an ownership interest in the foreign bank must be identified. The term ''voting shares or other voting interests'' was defined to mean shares or other interests that entitle the holder to vote for or select directors (or individuals exercising similar functions). These definitions are unchanged in the final rule, except for a technical conforming change of the word ''shares'' to ''securities.''

Person. The NPRM defined ''person'' (other than for purposes of the definition of ''owner'') to have the same meaning as provided in section 103.11(z). The final rule adopts the proposed definition without change.

Physical presence. The NPRM proposed the same definition of ''physical presence'' as that contained in section 5318(j): a place of business that (i) is maintained by a foreign bank; (ii) is located at a fixed address (other than

[13] Current BSA regulations define ''foreign bank'' as ''a bank organized under foreign law, or an agency, branch or office located outside the United States of a bank.'' The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law. 31 CFR 103.11(o). The regulations define ''bank'' to include U.S. offices of commercial banks or trust companies, national banks, thrift institutions, credit unions, other organizations (other than money services businesses) chartered under state banking laws and supervised by state banking supervisors, corporations acting under section 25(a) of the Federal Reserve Act, and banks organized under foreign law. 31 CFR 103.11(c).

[14] Such institutions include, for example, the Bank for International Settlements, International Bank for Reconstruction and Development (the World Bank), International Monetary Fund, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, International Finance Corporation, North American Development Bank, International Development Association, Multilateral Investment Guarantee Agency, European Investment Bank, Nordic Investment Bank, and Council of Europe Development Bank.

[15] 31 U.S.C. 5318(i)(2)(B)(i).

[16] *See* 67 FR 37743, *supra* note 8.

[17] The same family means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, stepchildren, stepsiblings, and parents-in-law, and spouses of any of the foregoing.

solely an electronic address) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank employs 1 or more individuals on a full-time basis and maintains operating records related to its banking activities; and (iii) is subject to inspection by the banking authority that licensed the foreign bank to conduct banking activities.''

Although no written comments addressed the proposed definition, Treasury received questions as to the meaning of the phrase ''subject to inspection,'' which is not defined in the Act. For purposes of this provision, Treasury generally considers a foreign bank to be ''subject to inspection'' if it is subject to the oversight of a government agency whose mission is to supervise the operations and condition of the foreign bank, including the prevention and detection of money laundering and other criminal conduct.

Regulated affiliate. The NPRM proposed the same definition of ''regulated affiliate'' as that contained in section 5318(j): a foreign bank that (1) is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable, and (2) is subject to supervision by a banking authority in the country regulating such affiliated depository institution, credit union, or foreign bank. For purposes of this definition, the NPRM proposed to define ''affiliate'' as any company that controls, is controlled by, or is under common control with another company. In the final rule, for consistency, Treasury is amending the definition of ''affiliate'' to conform to the definition set forth in section 5318(j)(4): ''a foreign bank that is controlled by or under common control with a depository institution, credit union, or foreign bank.''

The NPRM proposed to define ''control'' for purposes of the ''regulated affiliate'' definition to mean: (1) Ownership, control, or power to vote 25 percent or more of any class of voting shares or other voting interests of another company; or (2) control in any manner of the election of a majority of the directors (or individuals exercising similar functions) of another company. A Congressional comment takes the position that the proposed threshold for affiliation of 25 percent ownership is too low, and that a threshold of 80 percent would be more appropriate, in order to preclude an entity 75 percent of whose stock is not owned by a regulated affiliate from qualifying for the ''regulated affiliate'' exception. Treasury's selection of the 25 percent threshold was based in part on the definition of ''control'' contained in the Bank Holding Company Act [18] and the Federal Reserve's Regulation Y thereunder,[19] which define ''control'' to exist at the 25 percent threshold. On further consideration, Treasury has determined to increase the threshold required to meet the ''regulated affiliate'' definition from 25 to 50 percent.[20] Treasury notes that, in order to qualify for the exemption, the foreign bank also must be ''subject to supervision'' by a banking authority in the country regulating the affiliate. Treasury interprets this phrase, which is not defined in the Act, as having the same meaning as ''subject to inspection,'' discussed above in connection with the term ''physical presence.'' In order for a foreign bank to qualify for this exemption, the degree of supervision would not be as high as that required in order for the Board of Governors of the Federal Reserve System (''Federal Reserve'') to find that the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by the supervisor in the country regulating the affiliate.[21]

Finally, definitions of the terms ''United States'' and ''Territories and Insular Possessions'' have been added to the final rule in order to simplify and clarify the definitions of ''covered financial institution'' and ''foreign bank.'' These terms are defined by reference to the current definitions in 31 CFR Part 103.11 (nn) and (tt) respectively.

B. Section 103.177—Prohibition on Correspondent Accounts for Foreign Shell Banks; Records Concerning Owners of Foreign Banks and Agents for Service of Process

Prohibition on correspondent accounts for foreign shell banks. BSA section 5318(j) (added by section 313 of the Act) provides that a ''covered financial institution'' shall not establish, maintain, administer, or manage a ''correspondent account'' in the United States for, or on behalf of, a shell bank that is not a regulated affiliate. This prohibition was set forth in the NPRM, and is unchanged in the final rule. As Treasury stated in the NPRM, it expects that covered financial institutions will have terminated all correspondent accounts with any foreign bank that they know to be a shell bank that is not a regulated affiliate.

As discussed above, for purposes of this section, the term ''correspondent account'' essentially parallels the broad statutory definition. It thus includes, for example, transaction accounts and time and money market deposit accounts,[22] clearing and settlement accounts, fiduciary accounts, as well as transactions with foreign banks in securities, derivatives, repurchase agreements, foreign exchange, and other instruments, to the extent that these transactions constitute an ''account.''

This provision also includes the statutory requirement and NPRM requirement that a covered financial institution must take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by the covered financial institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to a foreign shell bank that is not a regulated affiliate. As Treasury noted in the NPRM, it expects covered financial institutions to terminate any correspondent account with a foreign bank that it knows is being used to indirectly provide banking services to a foreign shell bank. The final rule retains the provision of the NPRM that proposed to permit correspondent accounts for foreign shell banks that qualify as regulated affiliates. The final rule does not include the provision in the NPRM that proposed to require that correspondent accounts established, maintained, administered, or managed by a foreign branch of a covered financial institution be deemed to be established, maintained, administered or managed in the United States.

Records of owners and agents of foreign banks with correspondent accounts. The NPRM proposed to codify the requirement contained in BSA section 5318(k), as added by section 319(b) of the Act, that any covered financial institution that maintains a correspondent account in the United States for a foreign bank must maintain records in the United States identifying: (1) The owner(s) of such foreign bank; and (2) the name and address of a person who resides in the United States and is authorized to accept service of legal process for records regarding the correspondent account.[23]

Section 5318(k) does not define ''owner'' for purposes of this requirement. As discussed above,

[18] 12 U.S.C. 1841(a)(2) and (k).

[19] 12 CFR 225.2(a) and (c)(1).

[20] The 50 percent threshold is used in 12 U.S.C. 221a.

[21] 12 CFR 211.24(c)(1); *See* 67 FR 37740, *supra* note 8.

[22] 12 CFR 204.2(e) and (f)(1).

[23] The use of an embassy or consular office as process agent is not acceptable.

Treasury is amending in the final rule the definition of ''owner'' in the NPRM for purposes of this provision.

The NPRM also, as an option, permitted the use of the relevant portion of a foreign bank's FR Y–7 to meet the recordkeeping obligation for foreign banks that file this form. The form requires disclosure of ownership information starting at a threshold of 5 percent of a foreign banking organization's stock. Commenters supported the use of the FR Y–7 as an alternative means to satisfy this requirement, but some requested that the regulation be clarified in this regard. Another commenter noted that an individual's ownership interest in a foreign bank may be confidential in the foreign bank's home country for a variety of legitimate reasons, and asserted that the Federal Reserve recognizes such concerns and permits the ownership information contained in the FR Y–7 to be kept confidential.[24] The commenter requested that, in such cases, the foreign bank should not be required to disclose the information to a covered financial institution if the information is available to the appropriate U.S. government agencies.

To minimize recordkeeping burdens, Treasury has modified the final rule to except from the ownership recordkeeping requirement any foreign bank that is required to file its ownership information with the Federal Reserve on Form FR Y–7.[25] Inasmuch as the ownership information filed with the Federal Reserve on Form FR Y–7 will be available upon request to the Secretary or Attorney General, there is no purpose served in requiring covered financial institutions to maintain records separately in these cases.[26]

Safe harbor. In order to comply with the limitations on the direct and indirect provision of correspondent accounts to foreign shell banks, a covered financial institution must ensure that each foreign bank for which it provides a correspondent account is not a shell bank, and must take reasonable steps to ensure that correspondent accounts provided to such foreign banks are not being used to indirectly provide banking services to foreign shell banks.[27] A covered financial institution must also obtain information regarding owners and an agent for service of process for foreign banks for which it maintains correspondent accounts. Although the NPRM did not prescribe the manner in which a covered financial institution may satisfy its obligations under sections 5318(j) and 5318(k), it provided a safe harbor with respect to both sections if a covered financial institution uses the model certifications appended to the NPRM. The certification was designed to provide a simple and straightforward means of complying with these requirements.[28]

Many commenters posed questions and sought clarification regarding the use of the certification. As a threshold matter, nothing in this final regulation modifies, limits, or supercedes section 101 of the Electronic Records in Global and National Commerce Act, Pub. L. 106–229, 114 Stat. 464 (15 U.S.C. 7001). Thus, certifications and recertifications may be distributed, completed, returned, and stored in electronic form so long as the records are maintained in accordance with any other applicable regulations, and a foreign bank could post and update its certification on its website. In addition, facsimile copies are also acceptable as originals.

Commenters sought clarification regarding the extent to which more than one covered financial institution may rely on a certification. A separate certification need not be produced for each covered financial institution; a certification may be relied upon by each covered financial institution that is named or referred to therein (as well as each branch of a covered financial institution that maintains a correspondent account for the foreign bank executing the certification). A foreign bank may also execute a global certification that is applicable to all correspondent accounts maintained for it by covered financial institutions.

Commenters also asked for clarification as to whether a covered financial institution must obtain an individual certification from each foreign branch of a foreign bank for which it maintains a correspondent account. Again, this would be governed by the way in which the certification is completed. If a foreign bank wishes to complete one certification that covers all its branches, it may do so, so long as it expresses this in the certification. In such a case, the certification should reflect whether any of the foreign bank's branches provides shell banks with access to any correspondent account.

Commenters also inquired whether a covered financial institution must obtain a certification directly from each foreign bank for which it maintains a correspondent account, or whether it may satisfy the safe harbor in this section by obtaining an electronic copy of such certification from a central registry or database that may be organized to facilitate compliance with this regulation, or from another covered financial institution. A covered financial institution may satisfy the safe harbor by obtaining a copy of a foreign bank's certification either directly from the foreign bank or indirectly, such as from a central database or from another covered financial institution, so long as the form and content of the certification is otherwise sufficient and reliable. In the case of a certification filed with a central database, the foreign bank would presumably complete the certification without specifying particular covered financial institutions, but rather would certify as to all correspondent accounts maintained at covered financial institutions generally.

Commenters also sought clarification of the meaning of the phrase ''received, reviewed and accepted'' at the end of the certification, and, in particular, whether this implies that covered financial institutions must verify or otherwise determine the accuracy of the information provided by the foreign bank. Treasury expects the covered financial institution to review the form to ascertain that all information required by the applicable statutory provisions is included (responses to Parts C and D in all cases; names of owners (if required) in Part E and name and street address of a process agent in Part F); and should seek to obtain any other information that is missing from the certification. In addition, the covered financial institution is expected to determine that the information provided is internally consistent.[29] To avoid confusion the

[24] The FR Y–7 is available to the public upon request on an individual basis. A foreign bank may request confidential treatment for specific information on the form based on a demonstration that public release of such information would be exempt under the Freedom of Information Act. Such requests are considered on a case-by-case basis.

[25] A covered financial institution may verify that a foreign bank is required to file an FR Y–7 by checking the list of foreign banks with U.S. offices at *www.federalreserve.gov/releases/ibn/*.

[26] There is no indication in the Act that the purpose of this recordkeeping requirement is other than to provide the information to a Federal law enforcement officer.

[27] Treasury interprets this to mean that the foreign bank is not using the correspondent account to provide banking services to a foreign shell bank that is the foreign bank's direct customer. Thus, a foreign bank could certify that it is not using a correspondent account with a covered financial institution to provide banking services to any foreign shell bank, without in turn asking each of its foreign bank customers to provide it with a similar certification. To interpret this requirement otherwise would lead to an endless chain of certifications.

[28] Obtaining the certification is not the only means for compliance with the regulation. For example, an insured bank that maintains a correspondent account for any of its foreign branches is not required to obtain a certification from such branches.

[29] For example, if the foreign bank checks the second box in part C, the location of the foreign

word ''accepted'' has been deleted from the certification.

Recertification and verification requirements. The NPRM proposed to require that a covered financial institution obtain a verification of the information provided every two years, or any time that it ''has reason to believe'' that the information upon which it is relying may be inaccurate. The final rule extends from two to three years the safe harbor period for obtaining either a new certification or a recertification of a prior certification, and changes the operative term from ''verification'' to ''recertification'' to avoid confusion. In addition, in response to a Congressional comment, the final rule requires the covered financial institution to ''take appropriate measures'' to verify any information that it ''knows, suspects, or has reason to suspect'' may be incorrect. For example, information obtained by a covered financial institution in conducting due diligence required pursuant to the final rule to be issued implementing section 312 of the Act [30] may provide reason to suspect that the information obtained in a certification may not be accurate and may require the covered financial institution to either obtain a new certification or to take other appropriate measures to verify the accuracy of the information provided. In addition to these substantive changes, the final rule reorganizes and simplifies these provisions.

Closure of correspondent accounts. The NPRM proposed that, in order to obtain the benefit of the safe harbor, a covered financial institution must obtain a certification from the foreign banks for which it maintains correspondent accounts existing on the date that is 30 days after the publication of the final rule, within 90 days after publication of the final rule. With respect to accounts established after the date that is 30 days after the publication of the final rule, the NPRM stated that the safe harbor was available if the certification was obtained within 60 days of opening for new accounts established before January 1, 2003, and within 30 days of opening for accounts established thereafter. Commenters focused on two issues relating to these requirements: the time period allowed for satisfying the requirements after which account closure would be required, and the difficulties anticipated when closure is required.

With respect to existing accounts, commenters requested that, given the potentially large number of foreign banks for which they maintain correspondent accounts, a longer period of 120 to 180 days should be given. A Congressional comment urged Treasury to reduce the period. On balance, and considering the fact that covered financial institutions have been aware of this pending requirement for many months, Treasury is adopting this requirement with the 90 day period as proposed. With regard to new accounts, under the final rule covered financial institutions will have 30 days to obtain the initial certification and to remain within the safe harbor, regardless of whether the new account is opened before or after January 1, 2003.

The NPRM required that, if a covered financial institution does not obtain the information necessary to fulfill its obligations under sections 5318(j) and (k) within the prescribed time periods, it must terminate all correspondent accounts with the concerned foreign bank. Many commenters noted significant problems with this requirement, including the difficulties of terminating account relationships within a limited time when open positions or transaction accounts are involved, the potential for economic harm to result in many situations, and the potential liability of a covered financial institution resulting from such a termination. Commenters also questioned the extent to which the safe harbor from liability resulting from closure required in these situations that Treasury provided in the NPRM would be given effect in litigation, particularly in foreign jurisdictions. Due to these concerns, commenters sought greater flexibility in these situations, including the ability to keep accounts open pending resolution of these issues.

Because some correspondent accounts at the time of required termination may involve transactions that include open securities or futures positions, or may involve transaction accounts with outstanding checks or other transactions that need to be accounted for, a covered financial institution may exercise commercially reasonable discretion in determining the time frame for liquidating such open positions or otherwise completing the closing of an account. The measures a covered financial institution may take would include, but would not be limited to, following its customary practices upon the default of a customer, including when appropriate taking steps to close out positions in an orderly manner or temporarily freezing an account so as to avoid suffering a loss or unduly penalizing a foreign bank. However, a covered financial institution must ensure that an account that must be closed is not permitted to establish new positions.

As described above, the NPRM provided that if a covered financial institution has reason to believe that a foreign bank's certification may be inaccurate, it must undertake to verify such information. The NPRM also provided that if the covered financial institution has not obtained satisfactory verification within 90 or 60 days after commencing the process (depending on whether the verification was initiated before or after January 1, 2003), it must close all correspondent accounts for such foreign bank. The final rule requires that, if the covered financial institution has not obtained satisfactory verification within 90 days, it must close the accounts within a commercially reasonable time.

The final rule also carries over from the NPRM the provision stating that a covered financial institution may not establish a new correspondent account with a foreign bank with which it was required to close an account under this rule until it obtains the information required under this section.

Recordkeeping requirement. This provision, which sets forth the time period for retention of certifications and other information relied upon by the covered financial institution, is unchanged in the final rule.

Special rules concerning information requested prior to the effective date of the final rule. The NPRM proposed to permit the use by a covered financial institution of information described in either Treasury's Interim Guidance dated November 20, 2001 or the NPRM, that was requested of a foreign bank prior to 30 days after the publication of the final rule with respect to accounts in existence on or before such date, so long as such information is obtained on or before 90 days after the date of publication of the final rule. Several commenters sought confirmation that a covered financial institution would be in compliance with the final rule if it obtained information pursuant to the model certification attached to the Interim Guidance with respect to such accounts, so long as the covered financial institution makes the request within 30 days following publication of the final rule, and receives the information within 90 days following publication. Treasury confirms that this is the case. This provision has been clarified and condensed in the final rule.

bank's regulated affiliate should be consistent with the designated banking authority that supervises the foreign bank and its regulated affiliate.

[30] *See* 67 FR 37736, *supra* note 8.

C. 103.185—Summons or Subpoena of Foreign Bank Records; Termination of Correspondent Relationship

Issuance of process to foreign bank. The NPRM proposed to codify the provisions of section 5318(k) that authorize the Secretary or the Attorney General to issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and to request records related to such correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank. The summons or subpoena may be served on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance. These provisions are unchanged in the final rule.

Issuance of process to covered financial institution. The NPRM proposed that, upon receipt of a written request from a Federal law enforcement officer for information required to be maintained by a covered financial institution under this section, the covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request. This provision is unchanged in the final rule.

Termination of correspondent relationships upon receipt of notice. The NPRM proposed to codify the provisions of section 5318(k) that require a covered financial institution to terminate any correspondent relationship with a foreign bank not later than 10 business days after receipt of written notice from the Secretary or the Attorney General (in each case, after consultation with the other) that the foreign bank has failed either: (1) To comply with the summons or subpoena issued; or (2) to initiate proceedings in a United States court contesting such summons or subpoena. This provision is unchanged in the final rule.

Limitation of liability. The NPRM proposed to codify the provision in section 5318(k) that provides that a covered financial institution shall not be liable for terminating a correspondent account in accordance with the rule. This provision is unchanged in the final rule.

Failure to terminate relationship. The NPRM proposed to codify the provision of section 5318(k) that provides that a covered financial institution that fails to terminate the correspondent relationship upon receiving notice from the Secretary or the Attorney General is subject to a civil penalty of up to $10,000 per day until the correspondent relationship is so terminated. This provision is unchanged in the final rule.

IV. Regulatory Flexibility Act

It is hereby certified that this final rule is not likely to have a significant economic impact on a substantial number of small entities. Covered financial institutions that are subject to the recordkeeping requirements in the statute and the final rule tend to be large institutions. Moreover, any economic consequences that might result from the prohibition on dealings with foreign shell banks, or from the failure of a foreign bank to provide the information necessary for a covered financial institution to fulfill its recordkeeping obligations, flow directly from the underlying statute. Accordingly, the analysis provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

V. Executive Order 12866

The Department of the Treasury has determined that this final rule is not a ''significant regulatory action'' as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

VI. Paperwork Reduction Act

The collections of information contained in Appendix A to Subpart I of Part 103 had been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and assigned OMB Control Number 1505–0184.

The collection of information contained in Appendix B to Subpart I of Part 103 and the recordkeeping requirement in section 103.177(e) was submitted to OMB for review in conjunction with the issuance of the NPRM in accordance with the requirements of the Paperwork Reduction Act. These requirements have been approved by OMB and assigned OMB Control Number 1505–0184. The estimated average annual reporting burden associated with Appendix A is 20 hours per respondent; the estimated average annual reporting burden associated with Appendix B is 5 hours per respondent; and the estimated average recordkeeping burden associated with section 103.177(e) is 9 hours per recordkeeper. Comments concerning the accuracy of these burden estimates and suggestions on how to minimize the burdens should be sent (preferably by fax (202–395–6974)) to the Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail to P.O. Box 39, Vienna, VA 22183 or by e-mail to *regcomments@fincen.treas.gov*. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 31 CFR Part 103

Banks, banking, Brokers, Counter money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 312, 313, 314, 319, 352, Pub. L. 107–56, 115 Stat. 307.

2. Add new §§ 103.175 and 103.177 to subpart I immediately after undesignated centerheading ''SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS'' to read as follows:

§ 103.175 Definitions.

Except as otherwise provided, the following definitions apply for purposes of §§ 103.176 through 103.190:

(a) *Attorney General* means the Attorney General of the United States.

(b) [Reserved]

(c) *Certification* and *Recertification* mean the certification and recertification forms described in Appendices A and B, respectively, to this subpart.

(d) *Correspondent account.* (1) The term *correspondent account* means:

(i) [Reserved]

(ii) For purposes of §§ 103.177 and 103.185, a correspondent account is an account established by a covered financial institution for a foreign bank to receive deposits from, to make payments or other disbursements on behalf of a foreign bank, or to handle other financial transactions related to the foreign bank.

(2) For purposes of this definition, the term *account:*

(i) Means any formal banking or business relationship established to provide regular services, dealings, and other financial transactions; and

(ii) Includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.

(e) *Correspondent relationship* has the same meaning as correspondent account for purposes of §§ 103.177 and 103.185.

(f) *Covered financial institution* means:

(1) [Reserved]

(2) For purposes of §§ 103.177 and 103.185:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));

(ii) A commercial bank or trust company;

(iii) A private banker;

(iv) An agency or branch of a foreign bank in the United States;

(v) A credit union;

(vi) A thrift institution;

(vii) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); and

(viii) A broker or dealer registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(g) *Foreign bank.* The term *foreign bank* shall have the meaning provided in § 103.11(o).

(h) [Reserved]

(i) *Foreign shell bank* means a foreign bank without a physical presence in any country.

(j) [Reserved]

(k) [Reserved]

(l) *Owner.* (1) The term *owner* means any person who, directly or indirectly:

(i) Owns, controls, or has power to vote 25 percent or more of any class of voting securities or other voting interests of a foreign bank; or

(ii) Controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of a foreign bank.

(2) For purposes of this definition:

(i) Members of the same family shall be considered to be one person.

(ii) The term *same family* means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, stepchildren, stepsiblings, and parents-in-law, and spouses of any of the foregoing.

(iii) Each member of the same family who has an ownership interest in a foreign bank must be identified if the family is an owner as a result of aggregating the ownership interests of the members of the family. In determining the ownership interests of the same family, any voting interest of any family member shall be taken into account.

(iv) *Voting securities or other voting interests* means securities or other interests that entitle the holder to vote for or select directors (or individuals exercising similar functions).

(m) *Person* has the same meaning as provided in § 103.11(z).

(n) *Physical presence* means a place of business that:

(1) Is maintained by a foreign bank;

(2) Is located at a fixed address (other than solely an electronic address or a post-office box) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank:

(i) Employs 1 or more individuals on a full-time basis; and

(ii) Maintains operating records related to its banking activities; and

(3) Is subject to inspection by the banking authority that licensed the foreign bank to conduct banking activities.

(o) [Reserved]

(p) *Regulated affiliate.* (1) The term *regulated affiliate* means a foreign shell bank that:

(i) Is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and

(ii) Is subject to supervision by a banking authority in the country regulating such affiliated depository institution, credit union, or foreign bank.

(2) For purposes of this definition:

(i) *Affiliate* means a foreign bank that is controlled by, or is under common control with, a depository institution, credit union, or foreign bank.

(ii) *Control* means:

(A) Ownership, control, or power to vote 50 percent or more of any class of voting securities or other voting interests of another company; or

(B) Control in any manner the election of a majority of the directors (or individuals exercising similar functions) of another company.

(q) *Secretary* means the Secretary of the Treasury.

(r) [Reserved]

(s) *Territories and Insular Possessions* has the meaning provided in § 103.11(tt).

(t) *United States* has the meaning provided in § 103.11(nn).

§ 103.177 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.

(a) *Requirements for covered financial institutions.* (1) *Prohibition on correspondent accounts for foreign shell banks.* (i) A covered financial institution shall not establish, maintain, administer, or manage a correspondent account in the United States for, or on behalf of, a foreign shell bank.

(ii) A covered financial institution shall take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to a foreign shell bank.

(iii) Nothing in paragraph (a)(1) of this section prohibits a covered financial institution from providing a correspondent account or banking services to a regulated affiliate.

(2) *Records of owners and agents.* (i) Except as provided in paragraph (a)(2)(ii) of this section, a covered financial institution that maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying the owners of each such foreign bank whose shares are not publicly traded and the name and street address of a person who resides in the United States and is authorized, and has agreed to be an agent to accept service of legal process for records regarding each such account.

(ii) A covered financial institution need not maintain records of the owners of any foreign bank that is required to have on file with the Federal Reserve Board a Form FR Y–7 that identifies the current owners of the foreign bank as required by such form.

(iii) For purposes of paragraph (a)(2)(i) of this section, *publicly traded* refers to shares that are traded on an exchange or on an organized over-the-counter market that is regulated by a foreign securities authority as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(50)).

(b) *Safe harbor.* Subject to paragraphs (c) and (d) of this section, a covered financial institution will be deemed to be in compliance with the requirements of paragraph (a) of this section with respect to a foreign bank if the covered financial institution obtains, at least once every three years, a certification or recertification from the foreign bank.

(c) *Interim verification.* If at any time a covered financial institution knows, suspects, or has reason to suspect, that any information contained in a

certification or recertification provided by a foreign bank, or otherwise relied upon by the covered financial institution for purposes of this section, is no longer correct, the covered financial institution shall request that the foreign bank verify or correct such information, or shall take other appropriate measures to ascertain the accuracy of the information or to obtain correct information, as appropriate. See paragraph (d)(3) of this section for additional requirements if a foreign bank fails to verify or correct the information or if a covered financial institution cannot ascertain the accuracy of the information or obtain correct information.

(d) *Closure of correspondent accounts.* (1) *Accounts existing on October 28, 2002.* In the case of any correspondent account that was in existence on October 28, 2002, if the covered financial institution has not obtained a certification (or recertification) from the foreign bank, or has not otherwise obtained documentation of the information required by such certification (or recertification), on or before December 26, 2002, and at least once every three years thereafter, the covered financial institution shall close all correspondent accounts with such foreign bank within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transaction through any such account, other than transactions necessary to close the account.

(2) *Accounts established after October 28, 2002.* In the case of any correspondent account established after October 28, 2002, if the covered financial institution has not obtained a certification (or recertification), or has not otherwise obtained documentation of the information required by such certification (or recertification) within 30 calendar days after the date the account is established, and at least once every three years thereafter, the covered financial institution shall close all correspondent accounts with such foreign bank within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transaction through any such account, other than transactions necessary to close the account.

(3) *Verification of previously provided information.* In the case of a foreign bank with respect to which the covered financial institution undertakes to verify information pursuant to paragraph (c) of this section, if the covered financial institution has not obtained, from the foreign bank or otherwise, verification of the information or corrected information within 90 calendar days after the date of undertaking the verification, the covered financial institution shall close all correspondent accounts with such foreign bank within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transaction through any such account, other than transactions necessary to close the account.

(4) *Reestablishment of closed accounts and establishment of new accounts.* A covered financial institution shall not reestablish any account closed pursuant to this paragraph (d), and shall not establish any other correspondent account with the concerned foreign bank, until it obtains from the foreign bank the certification or the recertification, as appropriate.

(5) *Limitation on liability.* A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent account in accordance with this paragraph (d).

(e) *Recordkeeping requirement.* A covered financial institution shall retain the original of any document provided by a foreign bank, and the original or a copy of any document otherwise relied upon by the covered financial institution, for purposes of this section, for at least 5 years after the date that the covered financial institution no longer maintains any correspondent account for such foreign bank. A covered financial institution shall retain such records with respect to any foreign bank for such longer period as the Secretary may direct.

(f) *Special rules concerning information requested prior to October 28, 2002.* (1) *Definition.* For purposes of this paragraph (f) the term ''Interim Guidance'' means:

(i) The Interim Guidance of the Department of the Treasury dated November 20, 2001 and published in the **Federal Register** on November 27, 2001; or

(ii) The guidance issued in a document published in the **Federal Register** on December 28, 2001.

(2) *Use of Interim Guidance certification.* In the case of a correspondent account in existence on October 28, 2002, the term ''certification'' as used in paragraphs (b), (c), (d)(1), and (d)(3) of this section shall also include the certification appended to the Interim Guidance, provided that such certification was requested prior to October 28, 2002 and obtained by the covered financial institution on or before December 26, 2002.

(3) *Recordkeeping requirement.* Paragraph (e) of this section shall apply to any document provided by a foreign bank, or otherwise relied upon by a covered financial institution, for purposes of the Interim Guidance.

(Approved by the Office of Management and Budget under Control Number 1505–0184.)

3. Add new undesignated centerheading and § 103.185 to subpart I to read as follows:

Law Enforcement Access to Foreign Bank Records

§ 103.185 Summons or subpoena of foreign bank records; Termination of correspondent relationship.

(a) *Definitions.* The definitions in § 103.175 apply to this section.

(b) *Issuance to foreign banks.* The Secretary or the Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and may request records related to such correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank. The summons or subpoena may be served on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.

(c) *Issuance to covered financial institutions.* Upon receipt of a written request from a Federal law enforcement officer for information required to be maintained by a covered financial institution under paragraph (a)(2) of § 103.177, the covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request.

(d) *Termination upon receipt of notice.* A covered financial institution shall terminate any correspondent relationship with a foreign bank not later than 10 business days after receipt of written notice from the Secretary or the Attorney General (in each case, after consultation with the other) that the foreign bank has failed:

(1) To comply with a summons or subpoena issued under paragraph (b) of this section; or

(2) To initiate proceedings in a United States court contesting such summons or subpoena.

(e) *Limitation on liability.* A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a

correspondent relationship in accordance with paragraph (d) of this section.

(f) *Failure to terminate relationship.* Failure to terminate a correspondent relationship in accordance with this section shall render the covered financial institution liable for a civil penalty of up to $10,000 per day until the correspondent relationship is so terminated.

4. Add new appendices A and B to subpart I of part 103 as follows:

BILLING CODE 4810–02–P

APPENDIX A TO SUBPART I OF PART 103 – CERTIFICATION REGARDING CORRESPONDENT ACCOUNTS FOR FOREIGN BANKS

[OMB Control Number 1505-0184]

The information contained in this Certification is sought pursuant to Sections 5318(j) and 5318(k) of Title 31 of the United States Code, as added by sections 313 and 319(b) of the USA PATRIOT Act of 2001 (Public Law 107-56).

This Certification should be completed by any **foreign bank** that maintains a **correspondent account** with any U.S. bank or U.S. broker-dealer in securities (a **covered financial institution** as defined in 31 C.F.R. 103.175(f)). An entity that is not a foreign bank is not required to complete this Certification.

A **foreign bank** is a bank organized under foreign law and located outside of the United States (see definition at 31 C.F.R. 103.11(o)). A **bank** includes offices, branches, and agencies of commercial banks or trust companies, private banks, national banks, thrift institutions, credit unions, and other organizations chartered under banking laws and supervised by banking supervisors of any state (see definition at 31 C.F.R. 103.11(c)).*

A **Correspondent Account** for a foreign bank is any account to receive deposits from, make payments or other disbursements on behalf of a foreign bank, or handle other financial transactions related to the foreign bank.

Special instruction for foreign branches of U.S. banks: A branch or office of a U.S. bank outside the United States is a foreign bank. Such a branch or office is not required to complete this Certification with respect to Correspondent Accounts with U.S. branches and offices of the same U.S. bank.

Special instruction for covering multiple branches on a single Certification: A foreign bank may complete one Certification for its branches and offices outside the United States. The Certification must list all of the branches and offices that are covered and must include the information required in Part C for **each** branch or office that maintains a Correspondent Account with a Covered Financial Institution. Use attachment sheets as necessary.

A. The undersigned financial institution, _____ ("**Foreign Bank**") hereby certifies as follows:

---

* A "foreign bank" does not include any foreign central bank or monetary authority that functions as a central bank, or any international financial institution or regional development bank formed by treaty or international agreement.

B. Correspondent Accounts Covered by this Certification: Check **one** box.

☐ This Certification applies to **all** accounts established for Foreign Bank by Covered Financial Institutions.

☐ This Certification applies to Correspondent Accounts established by _____ (name of Covered Financial Institution(s)) for Foreign Bank.

C. Physical Presence/Regulated Affiliate Status: Check **one** box and complete the blanks.

☐ Foreign Bank maintains a **physical presence** in any country. That means:

- Foreign Bank has a place of business at the following street address: _____, where Foreign Bank employs one or more individuals on a full-time basis and maintains operating records related to its banking activities.
- The above address is in _____ (insert country), where Foreign Bank is authorized to conduct banking activities.
- Foreign Bank is subject to inspection by _____, (insert Banking Authority), the banking authority that licensed Foreign Bank to conduct banking activities.

☐ Foreign Bank does not have a physical presence in any country, but Foreign Bank is a **regulated affiliate**. That means:

- Foreign Bank is an affiliate of a depository institution, credit union, or a foreign bank that maintains a physical presence at the following street address: _____, where it employs one or more persons on a full-time basis and maintains operating records related to its banking activities.
- The above address is in _____ (insert country), where the depository institution, credit union, or foreign bank is authorized to conduct banking activities.
- Foreign Bank is subject to supervision by _____, (insert Banking Authority), the same banking authority that regulates the depository institution, credit union, or foreign bank.

☐ Foreign Bank does **not** have a physical presence in a country and is **not** a regulated affiliate.

D. Indirect Use of Correspondent Accounts: Check box to certify.

☐ No Correspondent Account maintained by a Covered Financial Institution may be used to indirectly provide banking services to certain foreign banks. Foreign Bank hereby certifies that it does **not** use any Correspondent Account with a Covered Financial Institution to indirectly provide banking services to

any foreign bank that does not maintain a physical presence in any country and that is not a regulated affiliate.

E. Ownership Information: Check box 1 or 2 below, **if applicable.**

☐ 1. **Form FR Y-7 is on file.** Foreign Bank has filed with the Federal Reserve Board a current Form FR Y-7 and has disclosed its ownership information on Item 4 of Form FR Y-7.

☐ 2. **Foreign Bank's shares are publicly traded**. Publicly traded means that the shares are traded on an exchange or an organized over-the-counter market that is regulated by a foreign securities authority as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(50)).

If **neither** box 1 or 2 of Part E is checked, complete item 3 below, **if applicable**.

☐ 3. Foreign Bank has no **owner(s)** except as set forth below. For purposes of this Certification, **owner** means any person who, directly or indirectly, (a) owns, controls, or has power to vote 25 percent or more of any class of voting securities or other voting interests of Foreign Bank; or (b) controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of Foreign Bank. For purposes of this Certification, (i) **person** means any individual, bank, corporation, partnership, limited liability company or any other legal entity; (ii) **voting securities or other voting interests** means securities or other interests that entitle the holder to vote for or select directors (or individuals exercising similar functions); and (iii) members of the same family* shall be considered one **person**.

Name	Address

F. Process Agent: complete the following.

The following individual or entity: _____
is a resident of the United States at the following street address:
_____, **and**
is authorized to accept service of legal process on behalf of Foreign Bank from the

* The same family means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, stepchildren, stepsiblings, parents-in-law and spouses of any of the foregoing. In determining the ownership interests of the same family, any voting interest of any family member shall be taken into account.

Secretary of the Treasury or the Attorney General of the United States pursuant to Section 5318(k) of title 31, United States Code.

G. General

Foreign Bank hereby agrees to notify in writing each Covered Financial Institution at which it maintains any Correspondent Account of any change in facts or circumstances reported in this Certification. Notification shall be given within 30 calendar days of such change.

Foreign Bank understands that each Covered Financial Institution at which it maintains a Correspondent Account may provide a copy of this Certification to the Secretary of the Treasury and the Attorney General of the United States. Foreign Bank further understands that the statements contained in this Certification may be transmitted to one or more departments or agencies of the United States of America for the purpose of fulfilling such departments' and agencies' governmental functions.

I, _____(name of signatory), certify that I have read and understand this Certification, that the statements made in this Certification are complete and correct, and that I am authorized to execute this Certification on behalf of Foreign Bank.

_____
[Name of Foreign Bank}

_____
[Signature]

_____
[Printed Name]

_____
[Title]

Executed on this _____ day of _____, 200__.

Received and reviewed by:

Name: _____
Title: _____
For: _____
[Name of Covered Financial Institution]

Date: _____

APPENDIX B TO SUBPART I OF PART 103 – RECERTIFICATION REGARDING CORRESPONDENT ACCOUNTS FOR FOREIGN BANKS

[OMB CONTROL NUMBER 1505-0184]

The information contained in this Certification is sought pursuant to Sections 5318(j) and 5318(k) of Title 31 of the United States Code, as added by sections 313 and 319(b) of the USA PATRIOT Act of 2001 (Public Law 107-56).

The undersigned financial institution, _____ ("Foreign Bank"), hereby certifies as follows:

1. Foreign Bank has executed a Certification dated _____, 20__ (the "Certification") relating to one or more Correspondent Accounts maintained by one or more Covered Financial Institutions for Foreign Bank. Terms defined in the Certification have the same meaning in this Recertification.

2. The information contained in the Certification:

☐ remains true and correct.

☐ is revised by the information provided with this Recertification (attach a statement describing the information that is no longer correct and stating the correct information).

Foreign Bank understands that each Covered Financial Institution at which it maintains a Correspondent Account may provide a copy of this Recertification to the Secretary of the Treasury and the Attorney General of the United States. Foreign Bank further understands that the statements contained in this Recertification may be transmitted to one or more departments or agencies of the United States of America for the purpose of fulfilling such departments' and agencies' governmental functions.

I, _____(name of signatory), certify that I have read and understand this Recertification, that the statements made in this Recertification are complete and correct, and that I am authorized to execute this Recertification on behalf of Foreign Bank.

_____
[Name of Foreign Bank]

_____
[Signature]

_____
[Title]

Executed on this _____ day of _____, 200__.

Received and reviewed by:

Name: _____
Title: _____
For: _____
[Name of Covered Financial Institution]

Date: _____

Dated: September 18, 2002.

James Sloan,

Director.

[FR Doc. 02–24142 Filed 9–25–02; 8:45 am]

BILLING CODE 4810–02–C

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA27

Financial Crimes Enforcement Network; Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is issuing this final rule to encourage information sharing among financial institutions and Federal government law enforcement agencies for the purpose of identifying, preventing, and deterring money laundering and terrorist activity.

DATES: This final rule is effective September 26, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel, FinCEN, (703) 905–3590; Office of the Assistant General Counsel (Enforcement), (202) 622–1927; or the Office of the Assistant General Counsel (Banking and Finance), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Public Law 107–56 (the Act). Of the Act's many goals, the facilitation of information sharing among governmental entities and financial institutions, for the purpose of combating terrorism and money laundering, is of paramount importance. Section 314 of the Act furthers this goal by providing for the sharing of information between the government and financial institutions, and among financial institutions themselves. As with many other provisions of the Act, Congress has charged the U.S. Department of the Treasury (''Treasury'') with developing regulations to implement these information-sharing provisions.[1]

Subsection 314(a) of the Act states in part that:

> [t]he Secretary shall * * * adopt regulations to encourage further cooperation among financial institutions, their regulatory authorities, and law enforcement authorities, with the specific purpose of encouraging regulatory authorities and law enforcement authorities to share with financial institutions information regarding individuals, entities, and organizations engaged in or reasonably suspected based on

[1] Section 314 of the Act is an uncodified provision that appears in the Historical and Statutory Notes to 31 U.S.C. 5311. Section 5311 is one of a number of statutory sections comprising the body of law commonly referred to as the Bank Secrecy Act (BSA), Pub. L. 91–508, codified, as amended, at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332. Regulations implementing the BSA appear at 31 CFR part 103. The authority of the Secretary to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

credible evidence of engaging in terrorist acts or money laundering activities.

Subsection 314(a)(2)(C) further states that the regulations adopted under section 314(a) may:

> include or create procedures for cooperation and information sharing focusing on * * * means of facilitating the identification of accounts and transactions involving terrorist groups and facilitating the exchange of information concerning such accounts and transactions between financial institutions and law enforcement organizations.[2]

Subsection 314(b) of the Act states in part that:

> [u]pon notice provided to the Secretary, 2 or more financial institutions and any association of financial institutions may share information with one another regarding individuals, entities, organizations, and countries suspected of possible terrorist or money laundering activities. A financial institution or association that transmits, receives, or shares such information for the purposes of identifying and reporting activities shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure, or any other person identified in the disclosure, except where such transmission, receipt, or sharing violates this section or regulations promulgated pursuant to this section.

II. Notice of Proposed Rulemaking

On March 4, 2002, FinCEN published for comment in the **Federal Register** a notice of proposed rulemaking (the NPRM), 67 FR 9879, that would implement the authority contained in section 314 of the Act. The proposed rule that would implement the authority contained in subsection 314(a) of the Act is set forth in proposed 31 CFR 103.100; the proposed rule that would implement section 314(b) of the Act is set forth in proposed 31 CFR 103.110.[3] On the same day it published the NPRM, FinCEN also published an interim rule implementing only the authority contained in subsection 314(b) of the Act. The interim and proposed rules relating to subsection 314(b) are substantively identical to one another, and the final rule contained in this document will supersede the interim rule.

The comment period on the NPRM closed on April 3, 2002. FinCEN received approximately 180 comments letters on the NPRM. Of these, more than half were submitted by individuals. The remainder of the comment letters were submitted by depository institutions, brokers and dealers in securities, insurance companies, other financial institutions, financial institution trade associations, law firms, and private consultants.

III. Summary of Comments and Revisions

A. Introduction

The format of the final rule is generally consistent with the NPRM. The terms of the final rule, however, differ from the terms of the NPRM in the following significant respects:

- The provisions of sections 103.100 and 103.110 have been reorganized for clarity (*e.g.*, the obligations of a financial institution that receives a request under section 103.100 to search its records have been grouped together under one paragraph);
- Language has been added to section 103.100, clarifying that unless an information request states otherwise, a financial institution need only search its records for current accounts maintained for a named suspect, accounts maintained for a named suspect during the preceding twelve months, and transactions conducted by, and funds transfers involving, a named suspect during the preceding six months;
- Language also has been added to section 103.100, clarifying that unless an information request states differently, such a request will not require a financial institution to report on future customer activity;
- The universe of financial institutions that may share information under section 103.110 has been expanded to generally include all financial institutions that are required under 31 CFR part 103 to establish and maintain an anti-money laundering program, unless FinCEN specifically determines that a particular category of financial institution should not be eligible to share information under this provision;
- The requirement for a financial institution to provide FinCEN with a certification prior to sharing information under section 103.110 has been replaced with a requirement to provide notice;
- Language has been added indicating that a financial institution, prior to sharing information with another financial institution under section 103.110, must take reasonable steps to verify that its counterpart has filed its own notice with FinCEN; and
- Language relating to revocation of a certification has been deleted from section 103.110.

B. Comments—General Issues

Comments on the Notice focused on the following matters: (1) The extent of information sharing between law enforcement and financial institutions; (2) the burden associated with the requirement that a financial institution search its records for accounts or transactions relating to individuals, entities, or organizations suspected of engaging in terrorist activity or money laundering; (3) the kinds of financial institutions that may share information under the protection of the safe harbor from liability contained in subsection 314(b) of the Act; and (4) the requirement that a financial institution provide a certification to FinCEN prior to sharing information with another financial institution.

1. *Information sharing between law enforcement and financial institutions.* Proposed section 103.100 would require a financial institution to search its records to determine whether it maintains or has maintained accounts for, or has engaged in transactions with, any individual, entity, or organization listed in a request submitted by FinCEN on behalf of a Federal law enforcement agency. Several commenters criticized proposed section 103.100 for creating a ''one-way'' flow of information from financial institutions to law enforcement, and for not adequately addressing how law enforcement can better provide useful information to financial institutions.

It is beyond dispute that the information sharing provisions in the rule, by providing law enforcement with the means to locate quickly account and transactions associated with suspected terrorists and money launderers, will be a critical tool in the fight against terrorism. FinCEN believes that such provisions fulfill the intent of section 314 to facilitate the flow of information between governmental agencies and financial institutions. In fact, the rule establishes a mechanism for law enforcement to provide financial institutions with the names of specific suspects, something that would not have likely have occurred on the same magnitude without such a mechanism. Because financial institutions will be required to report back to FinCEN any matches based on such suspect information, law enforcement will have

[2] The Secretary also has the broad authority to require financial institutions ''to maintain appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter or to guard against money laundering.'' 31 U.S.C. 5318(a)(2).

[3] Although there is no statutory requirement for regulations to be issued implementing subsection 314(b) of the Act, FinCEN determined that such rules were needed to specify the kinds of financial institutions that would be permitted to share information under subsection 314(b) and to clarify how such financial institutions could provide FinCEN with the requisite notice of their intent to share information under that subsection.

an added incentive to share information with the financial community.

FinCEN recognizes the importance of providing the financial community with more than just suspect information in order to assist financial institutions in identifying and reporting suspected terrorist activity or money laundering. FinCEN already issues a semi-annual report about suspicious trends and patterns derived from its review of suspicious activity reports, and regularly issues reports about money laundering activity both in various financial sectors and with respect to certain financial products. All of this information is posted on FinCEN's Web site.

The overarching policy directive of the Act generally, and section 314 in particular, is that more information sharing will better enable the Federal Government and financial institutions to guard against money laundering and terrorist financing. Moreover, as additional kinds of financial institutions are made subject to BSA requirements, the need for additional feedback and guidance increases. As a result, FinCEN anticipates making additional information available to financial institutions in the form of advisories and guidance documents once the immediate implementation of the Act has been completed. Working with the financial community, FinCEN will be able to assess the kind of information that will prove most useful. In addition, FinCEN will work with law enforcement and financial institution regulators to take advantage of FinCEN's ability to reach out to a broad array of financial institutions as a means of providing additional information and enhancing further cooperation among governmental authorities and financial institutions. The final rule does not preclude law enforcement, when submitting a list of suspects to FinCEN, from providing additional information relating to suspicious trends and patterns, and FinCEN specifically will encourage law enforcement to share such information with the financial community.

2. *Burden associated with information requests.* A number of commenters argued that complying with an information request under proposed section 103.100 would be too burdensome on financial institutions unless FinCEN were to restrict narrowly the scope of such requests.

FinCEN agrees that the breadth of information requests under section 103.100 requires some limitation to avoid unnecessary burden on financial institutions and unnecessary delay in receiving matching information from such institutions that can be forwarded quickly to Federal law enforcement agencies. The unique benefits of the information sharing provisions under section 103.100 stem from the ability of law enforcement, using FinCEN's relationship with the financial community, to locate quickly accounts and transactions of suspected terrorists and money launderers. This goal would be frustrated if each request for information were met with a flood of questions about the scope of the search required and complaints about the burden imposed. Therefore, FinCEN has struck a balance to maximize the value to law enforcement while minimizing the burden on financial institutions.

Except as otherwise provided in the information request, a financial institution is only required under the final rule to search its records for: (1) Any current account maintained for a named suspect; (2) any account maintained for a named suspect during the preceding twelve months; and (3) any transaction conducted by or on behalf of a named suspect, or any transmittal of funds conducted in which a named suspect was either the transmittor or the recipient, during the preceding six months that is required under law or regulation to be recorded by the financial institution or is recorded and maintained electronically by the institution. The limiting of searches to accounts maintained during the preceding twelve months and transactions and funds transfers conducted during the preceding six months is intended to narrow the scope of an information request to those records that can be searched quickly for responsive information. Similarly, FinCEN believes that a financial institution should be able to locate quickly any matching transaction that is required to be recorded under law or regulation or is recorded and maintained in a format that can be searched electronically. FinCEN reserves the right to require a more comprehensive search as circumstances warrant; in such cases, the information request will clearly delineate those broader terms.

As a general matter, a financial institution will not be required under the final rule to search its account holders' processed checks to determine whether a named suspect was a payee of a check because the payee, except in situations in which a person makes out a check to himself, is neither the person who conducted the transaction nor the person on whose behalf the transaction was conducted. In contrast, a financial institution will be required to search its records that are kept in accordance with the recordkeeping requirements of 31 CFR part 103, to determine whether a named suspect was a transmittor or a recipient to a funds transfer in the amount of $3,000 or more conducted during the preceding six months.

Several commenters also requested that FinCEN clarify whether financial institutions would be obligated under section 103.100 to report on future account opening activity or future transactions involving any individual, entity, or organization listed in a request submitted by FinCEN on behalf of a Federal law enforcement agency. Unless otherwise indicated in the information request from FinCEN, a financial institution will not be required to report on future account opening activity or future transactions. FinCEN anticipates that the need to report on future activity will be infrequent, and, at least for the immediate future, will be limited to individuals, entities, or organizations reasonably suspected of engaging in terrorist activity. In the event that a financial institution will be obligated to report on future activity, the terms of the information request will clearly so state. In such cases, FinCEN also will explicitly indicate whether the list of suspects included with an information request has been designated as a ''government list'' for purposes of any account opening requirements imposed under the authority of section 326 of the Act. Unless so designated, a list of suspects provided via section 103.100 is not required to be treated as a government list for purposes of section 326 of the Act.

3. *Kinds of financial institutions that may share information with each other.* Proposed section 103.110 generally would have limited the kinds of financial institutions eligible to share information for the purpose of detecting and reporting terrorist and money laundering activities to those institutions that have an obligation to report suspicious activity to Treasury-*e.g.*, depository institutions, certain money services businesses, and brokers or dealers in securities. Several commenters argued that the universe of eligible financial institutions should be expanded to include other kinds of financial institutions, such as insurance companies, investment companies, and futures commission merchants. According to these commenters, these other kinds of financial institutions may possess useful information related to terrorist activity and money laundering, and therefore should be permitted to share information under the protection of the safe harbor from liability afforded by subsection 314(b) of the Act and section 103.110.

FinCEN agrees that the universe of eligible financial institutions under section 103.110 should be expanded. When enacting subsection 314(b) of the Act, the Congress recognized that the flow of information among financial institutions is a key component in combating terrorism and money laundering. FinCEN believes that expanding the universe of financial institutions that may share information would help effectuate that flow of information. FinCEN also believes that those financial institutions that are required to establish and maintain an anti-money laundering program generally may have a need to share information when implementing such a program. Consequently, under the final rule, any financial institution described in 31 U.S.C. 5312(a)(2) that is required under 31 CFR part 103 to establish and maintain an anti-money laundering program, or is treated under 31 CFR part 103 as having satisfied the requirements of 31 U.S.C. 5318(h)(1), is eligible to share information under section 103.110, unless FinCEN specifically determines that a particular class of financial institution should not be eligible to share information under that section. For example, operators of credit card systems, because they are required under 31 CFR 103.135 to establish and maintain an anti-money laundering program, are eligible to share information under section 103.110. Registered brokers and dealers in securities also are eligible to share information under section 103.110, because they are treated under 31 CFR 103.120 as having satisfied the anti-money laundering program requirements of 31 U.S.C. 5318(h)(1). FinCEN reserves the right to designate a class of financial institutions as ineligible to share information under section 103.110 when, for example, it issues an anti-money laundering program rule applicable to such a class.

4. *Certification requirement.* Proposed section 103.110 would require a financial institution, in order to avail itself of the statutory safe harbor from liability when sharing information with another financial institution, to certify to FinCEN that it, among other things, has established adequate procedures to safeguard any information it receives under that section. A number of commenters argued that FinCEN replace the certification requirement with a requirement simply to provide notice. According to these commenters, the risk of liability for filing a technically-deficient certification might deter many financial institutions from sharing information. In addition, these commenters cited the explicit language of subsection 314(b) of the Act, which uses the term ''notice,'' rather than ''certification.''

FinCEN is mindful of the need to encourage financial institutions to share information for the purpose of better identifying and reporting terrorist or money laundering activities. At the same time, FinCEN recognizes the need to ensure that the right to share information under subsection 314(b) of the Act is not being used improperly. After weighing these competing concerns, FinCEN has decided that a financial institution or an association of financial institutions need only provide notice of its intent to share information, rather than a written certification. The final rule retains, however, the requirement for a financial institution to submit a new notice every year if it intends to continue sharing information. FinCEN believes that the minimal burden that an annual notice imposes is significantly outweighed by the need to remind financial institutions of their need to safeguard information shared under section 103.110.

A financial institution or association of financial institutions, prior to sharing information, also must take reasonable steps to verify that the institution or association with which it intends to share information has filed the requisite notice with FinCEN. The verification process is intended to help protect the privacy interests of customers of financial institutions by requiring financial institutions to take reasonable steps to ensure that such sharing is authorized. Under the final rule, a financial institution or an association of financial institutions may satisfy the verification requirement by confirming that the other institution or association appears on a list of financial institutions or associations that have filed the requisite notice. FinCEN will make such a list available to financial institutions and associations of financial institutions that have filed notice with it. FinCEN anticipates that the list will be updated on a quarterly basis. In the alternative, a financial institution or association may directly contact its counterpart to determine whether the requisite notice has been filed. A financial institution may confirm that notice has been filed by obtaining a copy of the other institution's or association's notice, or by other reasonable means, including accepting the representations of the other institution that a notice was filed after the most recent list has been distributed by FinCEN.

The terms of the final rule are prospective only. Thus, financial institutions that previously have filed certifications with FinCEN under the terms of the interim rule will not be required to file notices to replace those certifications. Such financial institutions, however, will be required to use the notice described in the Appendix to subpart H of 31 CFR part 103 when renewing the notice on an annual basis.

IV. Section-by-Section Analysis of Final Rule

A. 103.90—Definitions

Section 103.90 continues to define certain key terms used throughout subpart H. The definition of ''money laundering'' has been revised to mean an activity criminalized by 18 U.S.C. 1956 or 1957. Thus, a transaction conducted with the proceeds of any specified unlawful activity listed in section 1956 may constitute money laundering for purposes of subpart H. The definition of ''terrorist activity'' remains unchanged. Several commenters sought specific definitions for the terms ''account'' and ''transaction.'' The term ''account'' has been defined, based on the meaning given that term by section 311 of the Act. The term ''transaction'' has been defined by reference to 31 CFR 103.11(ii), with the following exception—a transaction for purposes of section 103.100 shall not be a transaction conducted through an account. Thus, a financial institution receiving an information request under section 103.100 is not required to search for and report on transactions through an account.

B. 103.100—Information Sharing Between Federal Law Enforcement Agencies and Financial Institutions

1. *Definitions.* Paragraph 103.100(a) continues to define the term ''financial institution,'' for purposes of section 103.100, as any financial institution described in 31 U.S.C. 5312(a)(2). Thus, under the final rule, FinCEN has the authority to request information regarding suspected terrorists or money launderers from any financial institution defined in the BSA, notwithstanding that FinCEN has not yet extended BSA regulations to all such financial institutions. Although all financial institutions should be on notice that FinCEN may contact them for information under section 103.100, the initial implementation of section 103.100 will involve, as a practical matter, only those financial institutions for which FinCEN possesses contact information—generally speaking, financial institutions that already are subject to BSA reporting obligations

such as the requirement to file suspicious activity reports.

2. *Information requests based on credible evidence concerning terrorist activity or money laundering.* Paragraph 103.100(b)(1) generally states that FinCEN, on behalf of a requesting Federal law enforcement agency, may require a financial institution to search its records to determine whether the financial institution maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization. Any request submitted by a Federal law enforcement agency to FinCEN must be accompanied by a written certification. Such certification must, at a minimum, state that each individual, entity, or organization about which the requesting agency is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering. The certification also must include enough specific identifying information, such as date of birth, address, and social security number, that would permit a financial institution to differentiate between common or similar names, and must further identify an individual at the requesting law enforcement agency who will act as a point of contact concerning the request.

Paragraph 103.100(b)(2) lists all the obligations of a financial institution that receives an information request under section 103.100. Those obligations are described in subparagraphs 103.100(b)(2)(i)–(v).

Subparagraph (b)(2)(i) states that upon receiving an information request from FinCEN, a financial institution must expeditiously search its records to determine whether it maintains or has maintained any account for, or has engaged in any transaction with, each individual, entity, or organization named in FinCEN's request. An information request under section 103.100 is intended to provide law enforcement with the means to locate quickly accounts or transactions involving suspected terrorists or money launderers; such a request is not intended to substitute for a subpoena. Thus, unless the information request states otherwise, a financial institution is only required to search its records for: (1) Any current account maintained for a named suspect; (2) any account maintained for a named suspect during the preceding twelve months; and (3) any transaction, other than a transaction conducted through an account, conducted by or on behalf of a named suspect, or any transmittal of funds conducted in which a named suspect was either the transmittor or the recipient, during the preceding six months that is required under law or regulation to be recorded by the financial institution or is recorded and maintained electronically by the institution. The phrase ''on behalf of'' is intended to capture transactions that may be conducted by persons acting as agents for any named suspect.

To help ensure that searches are conducted as quickly as possible, the final rule directs a financial institution to contact directly the requesting Federal law enforcement agency (whose contact information will be included in the information request) with any questions relating to the scope or terms of the request. However, any matches found as a result of information provided to a financial institution must be reported back to FinCEN, rather than the requesting law enforcement agency, so that FinCEN may provide law enforcement with a comprehensive product that may include matching BSA report information.

Subparagraph (b)(2)(ii) states that a financial institution must report to FinCEN the fact of any account or transaction matching the information listed on the information request. The information to be reported is limited to the name or account number of each individual, entity, or organization for which a match was found, as well as any Social Security number, date of birth, or other similar identifying information that was provided by the individual, entity, or organization when an account was opened or a transaction conducted.

FinCEN anticipates that the conveyance of both information requests and responses thereto under section 103.100 will be accomplished, at least in the short term, through a combination of conventional electronic mail and facsimile transmission. Section 362 of the Act requires that FinCEN develop a secure network (the Patriot Act Communication System or PACS) for sending and receiving sensitive information. As the PACS is further developed, FinCEN will assess whether the PACS can and should be applied to section 103.100 requests and responses.

Subparagraph (b)(2)(iii) requires a financial institution to designate one person to be the point of contact at the institution regarding the request and to receive similar requests for information from FinCEN in the future. When requested by FinCEN, a financial institution must provide FinCEN with the name, title, mailing address, e-mail address, telephone number, and facsimile number of such person, in such manner as FinCEN may prescribe. A financial institution that has provided FinCEN with contact information must promptly notify FinCEN of any changes to such information.

Subparagraph (b)(2)(iv) contains provisions relating to the use, disclosure, and security of an information request. Subparagraph (b)(2)(iv)(A) states that a financial institution shall not use an information request for any purpose other than to report matching information to FinCEN, to determine whether to establish or maintain an account, or to engage in a transaction, or to assist the financial institution in complying with any requirement of part 103. Thus, for example, a financial institution that is required to establish and maintain an anti-money laundering program under part 103 may use an information request to assist in that effort. In addition, a financial institution may share a list of suspects included with an information request with a commercial contractor to assist the financial institution in complying with the request; in such circumstances, the financial institution must take those steps necessary to safeguard the confidentiality of the information shared.

Subparagraph (b)(2)(iv)(B) states that a financial institution may not disclose the fact that FinCEN has requested or obtained information under section 103.100. As a general matter, Treasury will not treat the closing of an account for, or the refusal to open an account for or to conduct a transaction with, any individual, entity, or organization listed in an information request as a disclosure that is prohibited under the terms of subparagraph (b)(2)(iv)(B).

Subparagraph (c)(2)(iv)(C) states that a financial institution must adequately safeguard the confidentiality of information requested from FinCEN under section 103.100. A few commenters asked that, in applying this provision, FinCEN consider the steps that a financial institution currently takes to safeguard customer information in order to comply with the relevant provisions of the Gramm-Leach-Bliley Act. In light of these comments, the final rule states that its safeguarding requirements shall be deemed satisfied to the extent that a financial institution applies to information requests those procedures that the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, regarding the protection of customers' nonpublic personal information.

Subparagraph (b)(2)(v) states that nothing in section 103.100 shall be interpreted to require a financial institution to take, or decline to take, any action with respect to an account

established for, or a transaction engaged in with, a suspected terrorist or money launderer. Language also has been added indicating that a financial institution is not required to treat an information request as continuing in nature (so as to report on future activity), unless and to the extent otherwise indicated on the information request. Further language has been added to make clear that, unless otherwise indicated in the information request, a financial institution will not be required to treat the request as a list for purposes of the customer identification and verification requirements promulgated under section 326 of the Act.

3. *Relation to the Right to Financial Privacy Act and the Gramm-Leach-Bliley Act.* Paragraph 103.100(b)(3) states that the information required to be reported to FinCEN in response to an information request shall be treated as information required to be reported under Federal law, for purposes of the relevant exceptions contained in section 3413(d) of the Right to Financial Privacy Act, 12 U.S.C. 3413(d), and section 502(e)(8) of the Gramm-Leach-Bliley Act, 15 U.S.C. 6802(e)(8).

4. *No effect on law enforcement or regulatory investigations.* Paragraph 103.100(b)(4) states that nothing in subpart H affects the authority of a Federal agency or officer to obtain information directly from a financial institution. The information sharing provisions of section 103.100 are intended, in part, to provide Federal law enforcement with an additional tool to locate quickly on a broad scale financial accounts and transactions associated with suspected terrorists or money launderers. Such provisions are not intended to substitute for or replace any other tool that a Federal law enforcement agency may seek to use, including, but not limited to, a direct request from a Federal law enforcement agency to a financial institution for information.

C. 103.110—Voluntary Information Sharing Among Financial Institutions

1. *Definitions.* Paragraph 103.110(a) continues to define key terms that are used in section 103.110. The definition of a ''financial institution'' for purposes of section 103.110 has been revised to mean any financial institution described in 31 U.S.C. 5312(a)(2) that is required under 31 CFR part 103 to establish and maintain an anti-money laundering program, or is treated under 31 CFR part 103 as having satisfied the requirements of 31 U.S.C. 5318(h)(1), unless FinCEN specifically determines that a particular class of financial institution should not be eligible to share under section 103.110. The term ''association of financial institutions'' continues to mean a group or organization the membership of which is comprised entirely of financial institutions. A few commenters requested that this definition be expanded to include groups consisting of both financial institutions and non-financial institution affiliates. FinCEN believes that Congress's use of the terms ''financial institutions'' and ''association of financial institutions'' in subsection 314(b) of the Act demonstrates its intent to limit that section's information sharing provisions to financial institutions. In addition, the expansion of the definition of a financial institution for purposes of section 103.110 should help alleviate any concern that the section is being applied too narrowly. Thus, the definition of an association of financial associations has not been changed.

2. *Voluntary information sharing among financial institutions.* Paragraph 103.110(b)(1) continues to state generally that a financial institution or an association of financial institutions that complies with section 103.110's provisions-specifically, the provisions relating to notice, verification, use, disclosure, and security of information-may share information for the purpose of detecting, identifying, or reporting activities involving possible money laundering or terrorist activities under the protection of the statutory safe harbor from liability.

Paragraph 103.110(b)(2) continues to describe the manner in which a financial institution or association of financial institutions must provide notice to FinCEN before sharing information. As explained above, the term ''certification'' has been replaced by the term ''notice'' in the final rule. In addition, several commenters requested that FinCEN clarify the application of the notice requirement to information sharing among financial institution affiliates and subsidiaries. Some commenters requested that the notice requirement not apply to information sharing among financial institution affiliates. The terms of subsection 314(b) of the Act do not permit FinCEN to waive the notice requirement for any group of financial institutions. Thus, any financial institution seeking the protection of the statutory safe harbor from liability must notify FinCEN of its intent to share information with another financial institution, even when sharing information with an affiliated financial institution. It should be noted that the final rule does not in any way prohibit the sharing of information between financial institutions; rather, the rule makes clear that if a financial institution wants to share information with another financial institution and avail itself of the statutory safe harbor from liability, then it must abide by the conditions set forth in section 103.110, including providing notice to FinCEN.

Paragraph 103.110(b)(3) contains new language concerning the requirement that a financial institution or an association of financial institutions, prior to sharing information, verify that its counterpart has filed the requisite notice with FinCEN. As explained above, the verification process is intended to help protect the privacy interests of customers of financial institutions.

Paragraph 103.110(b)(4) sets forth the terms for the use, disclosure, and security of information shared under section 103.110. These terms are, for the most part, identical to the relevant terms laid out in the NPRM. One of the changes made in the final rule provides that a financial institution or an association of financial institutions may use information received under section 103.110, among other things, to assist the financial institution in complying with any requirement of 31 CFR part 103. Thus, a financial institution that receives information under section 103.110 may use such information to help establish and maintain a required anti-money laundering program. The final rule also contains new language stating that its safeguarding requirements shall be deemed satisfied to the extent that a financial institution applies to information it receives under section 103.110 those procedures that the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, regarding the protection of customers' nonpublic personal information. This latter change is similar to the change made to section 103.100 relating to the safeguarding of information requests under that section.

Paragraph 103.110(b)(5) restates the broad protection from liability for sharing information under section 103.110 contained in subsection 314(b) of the Act. The regulatory restatement does not extend the scope of the statutory protection; however, because FinCEN recognizes the importance of this statutory protection in the overall effort to encourage financial institutions to share information with each other, the statutory protection is repeated in the final rule to remind financial institutions of its existence. Paragraph 103.110(5) also continues to state that the broad protection from liability afforded by the statute shall not apply

to the extent that a financial institution or an association of financial institutions fails to comply with the provisions of section 103.110 relating to notice, verification, and use and security of information.

3. *Information sharing between financial institutions and the Federal government.* Paragraph 103.110(c) provides the procedures that a financial institution should follow if, as a result of information shared under section 103.110, the institution knows, suspects, or has reason to suspect terrorist activity or money laundering. The rule does not, however, create a de facto suspicious activity reporting rule for all financial institutions that do not currently have such an obligation.

4. *No effect on financial institution reporting obligations.* Paragraph 103.110(d) clarifies that nothing in subpart I of Title 31 of the CFR, including, but not limited to, voluntary reporting under section 103.110, relieves a financial institution of any obligation it may have to file a suspicious activity report pursuant to a regulatory requirement, or to otherwise directly contact a Federal agency concerning suspected terrorist activity or money laundering.

V. Administrative Matters

A. Regulatory Flexibility Act

It is hereby certified that this final rule is not likely to have a significant economic impact on a substantial number of small entities. The initial implementation of section 103.100 generally will involve those financial institutions that are subject to suspicious activity reporting; most financial institutions subject to suspicious activity reporting are larger businesses. Moreover, the burden imposed by the requirement that financial institutions search their records for accounts for, or transactions with, individuals, entities, or organizations engaged in, or reasonably suspected based on credible evidence of engaging in, terrorist activity, is not expected to be significant, particularly given the changes contained in this final rule. Section 103.110 is entirely voluntary on the part of financial institutions and no financial institution is required to share information with other financial institutions. Accordingly, the analysis requirements of the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

B. Paperwork Reduction Act

The requirement in section 103.100(c)(2)(ii), concerning reports by financial institutions in response to a request from FinCEN on behalf of a Federal law enforcement agency, is not a collection of information for purposes of the Paperwork Reduction Act. *See* 5 CFR 1320.4.

The requirement in section 103.110(b)(2), concerning notice to FinCEN that a financial institution intends to engage in information sharing, and the accompanying form in the Appendix to subpart H of 31 CFR part 103 that a financial institution must use to provide such notice, do not constitute a collection of information for purposes of the Paperwork Reduction Act. See 5 CFR 1320.3(h)(1).

The collection of information contained in section 103.110(c), concerning voluntary reports to the Federal government as a result of information sharing among financial institutions, will necessarily involve the reporting of a subset of information currently contained in a suspicious activity report. The filing of such reports has been previously reviewed and approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act and assigned OMB Control No. 1506–0001. 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.

C. Executive Order 12866

This final rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. Accordingly, a regulatory assessment is not required.

D. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), March 22, 1995, requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this notice provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Dated: September 18, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5332; title III, sec. 312, 314, 352, Pub. L. 107–56, 115 Stat. 307.

2. Section 103.90 is revised to read as follows:

§ 103.90 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Money laundering* means an activity criminalized by 18 U.S.C. 1956 or 1957.

(b) *Terrorist activity* means an act of domestic terrorism or international terrorism as those terms are defined in 18 U.S.C. 2331.

(c) *Account* means a formal banking or business relationship established to provide regular services, dealings, and other financial transactions, and includes, but is not limited to, a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.

(d) *Transaction.* (1) Except as provided in paragraph (d)(2) of this section, the term ''transaction'' shall have the same meaning as provided in § 103.11(ii).

(2) For purposes of § 103.100, a transaction shall not mean any transaction conducted through an account.

3. Section 103.100 is added to read as follows:

§ 103.100 Information sharing between Federal law enforcement agencies and financial institutions.

(a) *Definitions.* For purposes of this section:

(1) The definitions in § 103.90 apply.

(2) *Financial institution* means any financial institution described in 31 U.S.C. 5312(a)(2).

(3) *Transmittal of funds* has the same meaning as provided in § 103.11(jj).

(b) *Information requests based on credible evidence concerning terrorist activity or money laundering.*—(1) *In general.* A Federal law enforcement agency investigating terrorist activity or money laundering may request that FinCEN solicit, on the investigating agency's behalf, certain information from a financial institution or a group of financial institutions. When submitting such a request to FinCEN, the Federal law enforcement agency shall provide FinCEN with a written certification, in such form and manner as FinCEN may prescribe. At a minimum, such certification must: state that each individual, entity, or organization about which the Federal law enforcement agency is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering; include enough specific identifiers, such as date of birth, address, and social security number, that would permit a financial institution to differentiate between common or similar names; and identify one person at the agency who can be contacted with any questions relating to its request. Upon receiving the requisite certification from the requesting Federal law enforcement agency, FinCEN may require any financial institution to search its records to determine whether the financial institution maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization.

(2) *Obligations of a financial institution receiving an information request.*—(i) *Record search.* Upon receiving an information request from FinCEN under this section, a financial institution shall expeditiously search its records to determine whether it maintains or has maintained any account for, or has engaged in any transaction with, each individual, entity, or organization named in FinCEN's request. A financial institution may contact the Federal law enforcement agency named in the information request provided to the institution by FinCEN with any questions relating to the scope or terms of the request. Except as otherwise provided in the information request, a financial institution shall only be required to search its records for:

(A) Any current account maintained for a named suspect;

(B) Any account maintained for a named suspect during the preceding twelve months; and

(C) Any transaction, as defined by § 103.90(d), conducted by or on behalf of a named suspect, or any transmittal of funds conducted in which a named suspect was either the transmittor or the recipient, during the preceding six months that is required under law or regulation to be recorded by the financial institution or is recorded and maintained electronically by the institution.

(ii) *Report to FinCEN.* If a financial institution identifies an account or transaction identified with any individual, entity, or organization named in a request from FinCEN, it shall report to FinCEN, in the manner and in the time frame specified in FinCEN's request, the following information:

(A) The name of such individual, entity, or organization;

(B) The number of each such account, or in the case of a transaction, the date and type of each such transaction; and

(C) Any Social Security number, taxpayer identification number, passport number, date of birth, address, or other similar identifying information provided by the individual, entity, or organization when each such account was opened or each such transaction was conducted.

(iii) *Designation of contact person.* Upon receiving an information request under this section, a financial institution shall designate one person to be the point of contact at the institution regarding the request and to receive similar requests for information from FinCEN in the future. When requested by FinCEN, a financial institution shall provide FinCEN with the name, title, mailing address, e-mail address, telephone number, and facsimile number of such person, in such manner as FinCEN may prescribe. A financial institution that has provided FinCEN with contact information must promptly notify FinCEN of any changes to such information.

(iv) *Use and security of information request.* (A) A financial institution shall not use information provided by FinCEN pursuant to this section for any purpose other than:

(*1*) Reporting to FinCEN as provided in this section;

(*2*) Determining whether to establish or maintain an account, or to engage in a transaction; or

(*3*) Assisting the financial institution in complying with any requirement of this part.

(B)(*1*) A financial institution shall not disclose to any person, other than FinCEN or the Federal law enforcement agency on whose behalf FinCEN is requesting information, the fact that FinCEN has requested or has obtained information under this section, except to the extent necessary to comply with such an information request.

(*2*) Notwithstanding paragraph (b)(2)(iv)(B)(*1*) of this section, a financial institution authorized to share information under § 103.110 may share information concerning an individual, entity, or organization named in a request from FinCEN in accordance with the requirements of such section. However, such sharing shall not disclose the fact that FinCEN has requested information concerning such individual, entity, or organization.

(C) Each financial institution shall maintain adequate procedures to protect the security and confidentiality of requests from FinCEN for information under this section. The requirements of this paragraph (b)(2)(iv)(C) shall be deemed satisfied to the extent that a financial institution applies to such information procedures that the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801), and applicable regulations issued thereunder, with regard to the protection of its customers' nonpublic personal information.

(v) *No other action required.* Nothing in this section shall be construed to require a financial institution to take any action, or to decline to take any action, with respect to an account established for, or a transaction engaged in with, an individual, entity, or organization named in a request from FinCEN, or to decline to establish an account for, or to engage in a transaction with, any such individual, entity, or organization. Except as otherwise provided in an information request under this section, such a request shall not require a financial institution to report on future account opening activity or transactions or to treat a suspect list received under this section as a government list for purposes of section 326 of Public Law 107–56.

(3) *Relation to the Right to Financial Privacy Act and the Gramm-Leach-Bliley Act.* The information that a financial institution is required to report pursuant to paragraph (b)(2)(ii) of this section is information required to be reported in accordance with a Federal statute or rule promulgated thereunder, for purposes of subsection 3413(d) of the Right to Financial Privacy Act (12 U.S.C. 3413(d)) and subsection 502(e)(8) of the Gramm-Leach-Bliley Act (15 U.S.C. 6802(e)(8)).

(4) *No effect on law enforcement or regulatory investigations.* Nothing in this subpart affects the authority of a Federal agency or officer to obtain

information directly from a financial institution.

4. Section 103.110 is revised to read as follows:

§ 103.110 Voluntary information sharing among financial institutions.

(a) *Definitions.* For purposes of this section:

(1) The definitions in § 103.90 apply.

(2) *Financial institution.* (i) Except as provided in paragraph (a)(2)(ii) of this section, the term ''financial institution'' means any financial institution described in 31 U.S.C. 5312(a)(2) that is required under this part to establish and maintain an anti-money laundering program, or is treated under this part as having satisfied the requirements of 31 U.S.C. 5318(h)(1).

(ii) For purposes of this section, a financial institution shall not mean any institution included within a class of financial institutions that FinCEN has designated as ineligible to share information under this section.

(3) *Association of financial institutions* means a group or organization the membership of which is comprised entirely of financial institutions as defined in paragraph (a)(2) of this section.

(b) *Voluntary information sharing among financial institutions.*—(1) *In general.* Subject to paragraphs (b)(2), (b)(3), and (b)(4) of this section, a financial institution or an association of financial institutions may, under the protection of the safe harbor from liability described in paragraph (b)(5) of this section, transmit, receive, or otherwise share information with any other financial institution or association of financial institutions regarding individuals, entities, organizations, and countries for purposes of identifying and, where appropriate, reporting activities that the financial institution or association suspects may involve possible terrorist activity or money laundering.

(2) *Notice requirement.* A financial institution or association of financial institutions that intends to share information as described in paragraph (b)(1) of this section shall submit to FinCEN a notice described in Appendix A to this subpart H. Each notice provided pursuant to this paragraph (b)(2) shall be effective for the one year period beginning on the date of the notice. In order to continue to engage in the sharing of information after the end of the one year period, a financial institution or association of financial institutions must submit a new notice. Completed notices may be submitted to FinCEN by accessing FinCEN's Internet Web site, *http://www.treas.gov/fincen*, and entering the appropriate information as directed, or, if a financial institution does not have Internet access, by mail to: FinCEN, P.O. Box 39, Mail Stop 100, Vienna, VA 22183.

(3) *Verification requirement.* Prior to sharing information as described in paragraph (b)(1) of this section, a financial institution or an association of financial institutions must take reasonable steps to verify that the other financial institution or association of financial institutions with which it intends to share information has submitted to FinCEN the notice required by paragraph (b)(2) of this section. A financial institution or an association of financial institutions may satisfy this paragraph (b)(3) by confirming that the other financial institution or association of financial institutions appears on a list that FinCEN will periodically make available to financial institutions or associations of financial institutions that have filed a notice with it, or by confirming directly with the other financial institution or association of financial institutions that the requisite notice has been filed.

(4) *Use and security of information.* (i) Information received by a financial institution or an association of financial institutions pursuant to this section shall not be used for any purpose other than:

(A) Identifying and, where appropriate, reporting on money laundering or terrorist activities;

(B) Determining whether to establish or maintain an account, or to engage in a transaction; or

(C) Assisting the financial institution in complying with any requirement of this part.

(ii) Each financial institution or association of financial institutions that engages in the sharing of information pursuant to this section shall maintain adequate procedures to protect the security and confidentiality of such information. The requirements of this paragraph (b)(4)(ii) shall be deemed satisfied to the extent that a financial institution applies to such information procedures that the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801), and applicable regulations issued thereunder, with regard to the protection of its customers' nonpublic personal information.

(5) *Safe harbor from certain liability.*—(i) *In general.* A financial institution or association of financial institutions that shares information pursuant to paragraph (b) of this section shall be protected from liability for such sharing, or for any failure to provide notice of such sharing, to an individual, entity, or organization that is identified in such sharing, to the full extent provided in subsection 314(b) of Public Law 107–56.

(ii) *Limitation.* Paragraph (b)(5)(i) of this section shall not apply to a financial institution or association of financial institutions to the extent such institution or association fails to comply with paragraphs (b)(2), (b)(3), or (b)(4) of this section.

(c) *Information sharing between financial institutions and the Federal Government.* If, as a result of information shared pursuant to this section, a financial institution knows, suspects, or has reason to suspect that an individual, entity, or organization is involved in, or may be involved in terrorist activity or money laundering, and such institution is subject to a suspicious activity reporting requirement under this part or other applicable regulations, the institution shall file a Suspicious Activity Report in accordance with those regulations. In situations involving violations requiring immediate attention, such as when a reportable violation involves terrorist activity or is ongoing, the financial institution shall immediately notify, by telephone, an appropriate law enforcement authority and financial institution supervisory authorities in addition to filing timely a Suspicious Activity Report. A financial institution that is not subject to a suspicious activity reporting requirement is not required to file a Suspicious Activity Report or otherwise to notify law enforcement of suspicious activity that is detected as a result of information shared pursuant to this section. Such a financial institution is encouraged, however, to voluntarily report such activity to FinCEN.

(d) *No effect on financial institution reporting obligations.* Nothing in this subpart affects the obligation of a financial institution to file a Suspicious Activity Report pursuant to subpart B of this part or any other applicable regulations, or to otherwise contact directly a Federal agency concerning individuals or entities suspected of engaging in terrorist activity or money laundering.

5. Appendix A is added to subpart H to read as follows:

Appendix A to subpart H—Notice for Purposes of Subsection 314(b) of the USA Patriot Act and 31 CFR 103.110

BILLING CODE 4810–02–P

Notice for Purposes of Subsection 314(b)
of the USA Patriot Act and 31 CFR 103.110

Notice is given, on behalf of (insert name, address, and federal employer identification number (EIN) of financial institution or association of financial institutions)

_____

_____

_____

that:

(1) (i) The financial institution specified above is a "financial institution" as such term is defined in 31 CFR 103.110(a)(2), or (ii) the association specified above is an "association of financial institutions" as such term is defined in 31 CFR 103.110(a)(3).

(2) The financial institution or association specified above intends, for a period of one (1) year beginning on the date of this notice, to engage in the sharing of information with other financial institutions or associations of financial institutions regarding individuals, entities, organizations, and countries, as permitted by subsection 314(b) of the USA Patriot Act of 2001 (Public Law 107-56) and the implementing regulations of the Department of the Treasury, Financial Crimes Enforcement Network (31 CFR 103.110).

(3) The financial institution or association of financial institutions specified above has established and will maintain adequate procedures to safeguard the security and confidentiality of such information.

(4) Information received by the above named financial institution or association pursuant to section 314(b) and 31 CFR 103.110 will not be used or disclosed for any purpose other than as permitted by 31 CFR 103.110(b)(4).

(5) In the case of a financial institution, the primary federal regulator, if applicable, of the above named financial institution is _____.

(6) The following person may be contacted in connection with inquiries related to the information sharing under subsection 314(b) of the USA Patriot Act and 31 CFR 103.110:

NAME: _____
TITLE: _____
MAILING ADDRESS: _____
_____
_____
E-MAIL ADDRESS: _____
TELEPHONE NUMBER: _____
FACSIMILE NUMBER: _____

BY: _____
Name

_____
Title

_____
Date

[FR Doc. 02–24143 Filed 9–25–02; 8:45 am]
BILLING CODE 4810–02–C

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Morgan City–02–004]

RIN 2115—AA97

Safety Zone; Gulf Intracoastal Waterway Mile 134.0, Cypremort Point, LA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone 100 feet east and west of the Louisa Bridge on the Gulf Intracoastal Waterway, mile 134.0. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with construction of the new Louisa Bridge in Cypremort Point, Louisiana. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Morgan City, or his designated representative.

DATES: This rule is effective from 6 a.m. on August 27, 2002 until 11 a.m. on November 7, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Morgan City–02–004] and are available for inspection or copying at Marine Safety Office Morgan City, 800 David Drive, Morgan City, Louisiana, 70380 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) John Hahn, Marine Safety Office Morgan City, at (985) 380–5377.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Information was made available to the Coast Guard in insufficient time to publish an NPRM or for publication in the **Federal Register** 30 days prior to the event. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect vessels and mariners from the hazards associated with construction of the new bridge.

Background and Purpose

The Captain of the Port Morgan City is establishing a temporary safety zone extending the entire width of the waterway from 100 feet east of the existing Louisa Bridge to 100 feet west of the bridge. The bridge is located at mile 134.0 of the Gulf Intracoastal Waterway. The Louisiana Department of Transportation and Development is constructing a new Louisa Bridge adjacent to the existing bridge. This construction project includes laying concrete foundations for the new bridge. The safety zone will be enforced on Tuesdays or, in the alternative, Thursdays from 6 a.m. to 11 a.m. while the concrete is being laid. Thursdays will be utilized as make up days if Tuesday operations are cancelled due to weather. The safety zone is needed to protect persons and vessels from the potential safety hazards associated with construction. Entry into this zone is prohibited to all vessels unless authorized by the Captain of the Port Morgan City, or his designated representative.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies procedures of DOT is unnecessary. This rule will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal as the zone will only be enforced for a five-hour period each week on Tuesdays or on Thursdays if that Tuesday's operations were cancelled due to inclement weather. Mariners will be updated as to the status of the zone via broadcast notice to mariners.

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 for the reasons enumerated under the *Regulatory Evaluation* above.

If you are a small business entity and are significantly affected by this rule please contact LTJG John Hahn, Marine Safety Office Morgan City, at (985) 380–5377.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year.

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34) (g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T08–099 is added to read as follows:

§ 165.T08–099 Safety Zone; Gulf Intracoastal Waterway, Cypremort Point, Louisiana.

(a) *Location.* The following area is a safety zone: All waters extending the entire width of the waterway from 100 feet east and west of the existing Louisa Bridge, Gulf Intracoastal Waterway, Mile 134, Cypremort Point, Louisiana.

(b) *Enforcement period.* This section is effective from 6 a.m. on August 27, 2002 to 11 a.m. November 7, 2002. This section will be enforced every Tuesday or, in the event Tuesday's operations are cancelled due to weather, Thursday from 6 a.m. to 11 a.m. beginning August 27, 2002 and ending on November 7, 2002.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Morgan City.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Morgan City, or his designated representative. They may be contacted via VHF Channel 13 or 16, or via telephone at (985) 380–5377.

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

Dated: August 20, 2002.

S.P. Garrity,

Captain, U.S. Coast Guard, Captain of the Port Morgan City.

[FR Doc. 02–24445 Filed 9–25–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–61–1–7564; FRL–7382–6]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Louisiana: Substitute Contingency Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Louisiana for the Baton Rouge ozone non-attainment area for the purpose of replacing the previously approved contingency measures in the Demonstration of Attainment. These replacement measures meet the requirements in sections 172(c)(9) and 182(c)(9) of the Clean Air Act (the Act) as amended in 1990. We are approving replacement of the State's current contingency measures with contingency measures that require emission reductions from the Trunkline Gas Company—Patterson Compressor Station in St. Mary Parish. The State's current contingency measure requirement is that it hold 5.7 tons per day (tpd) of VOC emission reductions ''on deposit'' in the State of Louisiana Emission Reduction Credit Bank (ERC Bank). The replacement contingency measure that the EPA is approving would require that the Trunkline facility permanently reduce its volatile organic compound (VOC) emissions by 6.1 tpd from 1990 emission levels. These reductions are surplus and federally enforceable.

Pursuant to section 553(d) of the Administrative Procedure Act, EPA finds good cause to make this action effective immediately.

DATES: This final rule is effective September 26, 2002.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Air Quality Compliance Division, 7290 Bluebonnet, 2nd Floor, Baton Rouge, Louisiana.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7367.

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

What Action Is EPA Taking Today?

We are granting final approval of Louisiana's substitute contingency measures SIP revision, which substitutes 6.1 tpd in VOC emission reductions from the Trunkline Gas Company for the previously approved measure. We are approving this revision to the Louisiana SIP to meet the requirements of sections 172(c)(9) and 182(c)(9) of the Act.

Section 553(d) of the Administrative Procedure Act generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, if an Agency identifies a good cause, section 553(d)(3) allows a rule to take effect earlier, provided that the Agency publishes its reasoning in the final rule. EPA is making this action effective immediately because this rule is related to the Baton Rouge 1-hour ozone Attainment Plan and Transport State Implementation Plan, on which the EPA intends to take imminent action (see 67 FR 50391, August 2, 2002). In conjunction with its August 2, 2002, proposed approval of the attainment demonstration, EPA proposed to extend the ozone attainment date for the BR area to November 15, 2005, while retaining the area's current classification as a serious ozone nonattainment area and to withdraw EPA's June 24, 2002, rulemaking determining nonattainment and reclassification of the BR area (67 FR 42687). The effective date of EPA's June 24, 2002, nonattainment determination and reclassification is imminent. Furthermore, making this action effective immediately does not impose any additional requirements, because the underlying regulations are already effective under state law.

What Are the Clean Air Act Requirements?

Sections 172(c)(9) and 182(c)(9) of the Act require that SIPs contain additional measures that will take effect without further action by the state or EPA if an area fails to attain the standard by the applicable date, or to meet Rate-of-Progress Plan (ROPP) deadlines. The Act does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures. However, EPA provided guidance interpreting the control measure requirements of sections 172(c)(9) and 182(c)(9) in the April 16, 1992, General Preamble for Implementation of the Act (see 57 FR 13498, 13510, April 16, 1992). In that guidance, EPA indicated that states with moderate and above ozone nonattainment areas, such as the Baton Rouge area, should include sufficient contingency measures so that, upon implementation of such measures, additional emission reductions of up to three percent of the emissions in the adjusted base year inventory (or such lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure has been identified. The State must show that the contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions.

Why Is EPA Taking This Action?

We are taking this action because the State submitted an adequate demonstration to show that the substitute contingency measure provides the necessary reductions to meet the requirement.

What Does the State's Substitute Contingency Measure Include?

The Trunkline Gas Company—Patterson Compressor Station in St. Mary Parish facility installed a flare in 1998 to dispose of flash gases from several storage containers to comply with Louisiana's waste gas disposal rule and comprehensive toxic air pollutant control program. This was an alternative to combustion in a furnace or closed combustion chamber. The destruction efficiency of the open air flare is estimated at 99 percent.

After the installation of the flare, VOC emissions changed from 13.4 tpd to 0.4 tpd. The resulting 13 tpd of emission reductions are creditable. To ensure that these emission reductions are permanent and federally enforceable, the revised emission limit is reflected in the permit issued to Trunkline by the State. The permit makes the additional emission reductions available for SIP purposes, *i.e.*, the reductions are surplus, permanent, and enforceable. 6.1 tpd of this 13 tpd reduction will be credited to contingency measures and will no longer be available for any other use. Because the 6.1 tpd reduction from the Trunkline facility is greater than the 5.7 tpd in the prior contingency measure, this SIP revision will result in lower emissions and thus also complies with section 110(l) of the Act.

The Trunkline facility is located approximately 40 kilometers from the Baton Rouge ozone nonattainment area. In 1997, EPA issued a policy allowing 1-hour ozone nonattainment areas to take credit in their Post-1996 ROPP [1] for emission reductions obtained from sources outside the designated nonattainment area, provided the sources are no farther away than 100 km (for VOC sources) or 200 km (for NO_X sources) from the nonattainment area.[2]

The Trunkline Gas Company had not initially accounted for 13.4 tpd of VOC emissions. As a result, the VOC emissions from this facility had not been included in the point source emissions inventory for 1990. Emissions reported in a corrected 1992 annual emissions inventory submitted to LDEQ June 6, 1997, are the best estimate of the source's 1990 base year emissions. These emissions were added back to the 1990 base year emissions inventory. The revised 1990 VOC base year inventory that included these Trunkline emissions would result in a 204.6 tpd revised 1990 base year inventory.

An additional 2.0 tpd of emission reductions required to meet CAA requirements were identified in the 15% ROPP revisions. The additional 2.0 tpd were provided by using a 1.4 tpd ''surplus'' 9% ROPP reduction from the Trunkline permit plus 0.6 tpd of point source reductions (163 tons per year or 0.45 tpd of VOCs from the Dow Chemical permit and 56 tons per year or 0.15 tpd of VOCs from the BASF Corporation permit).

There were an additional 1.2 tpd of reductions required to meet the 9% ROPP identified in the revisions. These were also taken from the 13.0 tpd Trunkline emissions reductions that were netted from the post-90 emissions growth, leaving a remainder of 10.4 tpd, of which 6.1 tpd will be used as the contingency measure EPA is now approving.

In a separate action, EPA has proposed approval of the revised 1990 Base Year Emissions Inventory to include the Trunkline emissions, the 15% Rate-of-Progress Plan, and the 9% Rate-of-Progress Plan submitted as part

[1] EPA has historically allowed a surplus emission reduction in ROPP to be credited towards meeting the section 172 and section 182 requirements. EPA's rationale is that not allowing excess emission reductions to be used as contingency measures discourages areas from reducing emissions ''as expeditiously as practicable'' and is, therefore, inconsistent with section 172 of the Act. EPA memorandum, ''Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 13, 1993.

[2] EPA memorandum, ''Guidance for Implementing the 1–Hour Ozone and Pre-Existing PM_{10} NAAQS,'' from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, December 23, 1997.

of the December 31, 2001, Attainment Plan/Transport SIP (*see* 64 FR 50391, August 2, 2002.)

What Comments Did EPA Receive in Response to the May 20, 2002, Proposed Rule?

EPA received comments on the Notice of Proposed Rulemaking (NPR) from the Louisiana Chemical Association (LCA), the Louisiana Environmental Action Network (LEAN), the Louisiana Mid-Continent Oil and Gas Association (LMCOGA), and the Baton Rouge Ozone Task Force Steering Committee. A summary of the comments received and EPA's response is presented below.

Three commenters (LCA, LMCOGA, and the Steering Committee) support EPA's finding, agreeing that EPA's analysis is reasonable and consistent with EPA guidance.

LEAN opposes this action with the following comments:

Comment 1: This contingency measure does not meet EPA guidelines, or the Clean Air Act. This measure is not a contingency measure because it has already been implemented. Because the measure cannot be triggered for a failure to attain, it cannot be used.

Response 1: In the General Preamble, EPA provided guidance interpreting the control measure requirements of 172(c)(9) and 182(c)(9) of the Act. A contingency measure should, at a minimum, ensure that an appropriate level of emissions reduction progress continues to be made if attainment or Reasonable Further Progress is not achieved and additional planning by the State is needed. We followed our General Preamble interpretation in taking this final action.

Although the emissions reductions from the Trunkline facility first occurred in 1998, the reductions are continuing on an annual basis and are surplus, permanent and federally enforceable. In other words, the 13 tpd reduction is realized at the facility on a continuing basis. Thus, if the reductions were not used for a contingency measure, the facility could, for example, apply the reduction toward the State's Emissions Credit Bank (*see,* 67 FR 48083, July 23, 2002). However, the Trunkline credits are not available for any other use while they are identified in the approved SIP as contingency measures. A failure to attain will trigger these credits to be applied toward making progress to attain. Even though the measure is already implemented, the continuing reduction credits from the Trunkline facility are, in effect, set aside to be applied in the event that attainment is not achieved. These credits are immediately available, without further action by the State, which is another necessary feature for a measure to be used as a contingency measure.

Comment 2: EPA has made no factual or rational argument as to why the original contingency plan should be changed. Therefore, the original, approved contingency plan should remain in place. This change to the SIP was initiated because EPA recognized that the general offset requirement program in section 182(c)(10) of the Act was not being implemented correctly.

Response 2: As explained in our proposal (67 FR 35468, May 20, 2002), EPA previously approved a contingency measures plan as satisfying sections 172(c)(9) and 182(c)(9) of the Act (64 FR 35930, July 2, 1999). The contingency plan consisted of 5.7 tpd of VOC ERCs held in escrow in the Louisiana ERC Bank that would be confiscated by the State and no longer available for use in the event of a milestone failure or if attainment was not achieved in a timely manner. In August 1999, a petition for review was filed in the United States Court of Appeals for the Fifth Circuit challenging our July 2, 1999, SIP approval. *Louisiana Environmental Action Network* v. *EPA,* No. 99–60570. In response to the litigation, we requested a partial voluntary remand to reconsider that final approval of the State's contingency measures plan for the Baton Rouge area. On October 19, 2000, the Fifth Circuit Court of Appeals granted a Joint Motion for a Partial Voluntary Remand.

The State has submitted this contingency measure as a substitute for the ERC bank contingency measure. This final action serves as EPA's response to the voluntary remand. EPA believes that this is a reasonable basis for approving the reductions from the Trunkline facility as Louisiana's contingency measure to substitute for the previously remanded contingency measures.

It is the State's responsibility to demonstrate how the measures in its SIP revision meet the requirements of the Act. EPA's role in approving measures for the SIP is to evaluate the State's submittal. The State has the option to replace approved measures in the SIP at its discretion, provided that the SIP continues to meet all applicable Clean Air Act requirements. The Act does not specify the nature of the contingency measures a State must submit. As long as the substitute measures meet the requirements of the Act and do not weaken the SIP, EPA can and must approve the revision.

Comment 3: There is no factual argument given in the proposed rule that indicates or demonstrates that the proposed contingency rule will have any impact on the ozone problem in the Baton Rouge ozone nonattainment area. The emission reductions do not come from the nonattainment area, and they were not included in the assessment for the currently approved SIP.

Response 3: As noted above, EPA has proposed approval of an adjustment of Louisiana's 1990 baseline to include the Trunkline emissions (*see* 64 FR 50391, August 2, 2002). Once these emissions are included in the baseline, which will occur prior to any milestone date, reducing them will lower emissions in the area on a continuing basis.

Furthermore, EPA's basis for approving the Trunkline credits for contingency measures lies in our 1997 guidance [3] that allows credits from outside a nonattainment area (within defined boundaries) to be used to meet its annual Rate of Progress emission reductions, provided that such emissions are included in the baseline.

Comment 4: This is the same contingency measure as that proposed in the revised SIP that is currently being reviewed by EPA. This implies that the same contingency measure could potentially be implemented twice.

Response 4: The commenter is correct that this is the same contingency measure proposed in the revised SIP that is currently under review. This measure is being acted on now as a separate rule apart from the main SIP rulemaking action, in response to the voluntary remand noted in Response 1, above. The measure will not be approved again to meet any different purpose. EPA believes this contingency measure does satisfy the requirements of sections 172(c)(9) and 182(c)(9) of the Act. In the event that this contingency measure is ''triggered'' by a formal EPA finding that the area failed to meet an applicable milestone, Louisiana will then be required to submit a ''backfilling'' contingency measure, according to a schedule established by EPA, to ensure that adequate emission reductions continue to be available to serve as contingency measures to cover any future applicable milestone failures.

Comment 5: The proposed contingency measures are simply a paper change that should not be allowed. The reductions were not included in the 1990 baseline or the subsequent demonstration modeling, and therefore, should not be allowed as a contingency measure.

[3] ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS'' dated December 29, 1997, in the memorandum from Richard Wilson, Acting Assistant Administrator for Air and Radiation.

Response 5: As noted in Response 1, above, EPA does not believe this is a ''paper change.'' The emissions reductions from the Trunkline facility are continuing, real, surplus, permanent, and enforceable. The 6.1 tpd set aside as contingency measures are not available for any other use while they are approved as contingency measures in the SIP. In addition, as noted above, EPA has proposed action to revise the 1990 baseline to include these emissions.

EPA's Rulemaking Action

We are granting final approval pursuant to sections 110 and sections 172(c)(9) and 182(c)(9) of the Act because we find that the State has adequately demonstrated that the substitute contingency measure provides the necessary reductions to meet the requirements of the Act, and that these reductions are permanent, surplus and federally enforceable.

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. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have 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), nor will it 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), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. 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). This rule will be effective September 26, 2002.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial revew of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 26, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 17, 2002.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

Part 52 of chapter I, title 40, *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 T—Louisiana

2. In the table in § 52.970(e) entitled ''EPA Approved Louisiana Nonregulatory Provisions and Quasi-Regulatory Measures'' the entry for ''Contingency Measures'' is revised to read as follow:

§ 52.970 Identification of plan.

* * * * *

(e) *EPA approved nonregulatory provisions and quasi-regulatory measures.*

* * * * *

EPA APPROVED LOUISIANA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
*	*	*	*	*
Contingency Plan	Baton Rouge, LA	12/28/2001	September 26, 2002 [67 FR 60590].	Substitute measure to replace the measure approved on 07/02/99, 64 FR 35939.
*	*	*	*	*

[FR Doc. 02–24339 Filed 9–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–61–2–7566; FRL–7382–7]

Approval and Promulgation of Air Quality State Implementation Plans; Louisiana: Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Louisiana establishing a Vehicle Inspection and Maintenance (I/M) Program for the Baton Rouge nonattainment area. EPA proposed approval of the I/M SIP revision on July 2, 2002. The program consists of On-Board Diagnostic (OBD) testing for all 1996 and newer vehicles, plus antitampering and a gas cap pressure test for all applicable vehicles.

Final approval of this SIP will eliminate the sanction clock that was stayed on August 10, 1999, with an interim final determination that the State had more likely than not cured the deficiencies that prompted the original disapproval.

Pursuant to section 553(d) of the Administrative Procedure Act, EPA finds good cause to make this action effective immediately.

DATES: This final rule is effective on September 26, 2002.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Air Quality Compliance Division, 7290 Bluebonnet, 2nd Floor, Baton Rouge, Louisiana.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214)665–7367.

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

What Action Is EPA Taking Today?

We are granting final approval of Louisiana's vehicle I/M program. The program applies to the five parish Baton Rouge nonattainment area. EPA proposed approval of the Louisiana I/M SIP revision on July 2, 2002 (67 FR 44410).

Section 553(d) of the Administrative Procedure Act generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, if an Agency identifies a good cause, section 553(d)(3) allows a rule to take effect earlier, provided that the Agency publishes its reasoning in the final rule. EPA is making this action effective immediately because this rule is related to the Baton Rouge 1-hour ozone Attainment Plan and Transport State Implementation Plan, on which the EPA intends to take imminent action (*see* 67 FR 50391, August 2, 2002). In conjunction with its August 2, 2002, proposed approval of the attainment demonstration, EPA proposed to extend the ozone attainment date for the BR area to November 15, 2005, while retaining the area's current classification as a serious ozone nonattainment area and to withdraw EPA's June 24, 2002, rulemaking determining nonattainment and reclassification of the BR area (67 FR 42687). The effective date of EPA's June 24, 2002, nonattainment determination and reclassification is imminent. Furthermore, making this action effective immediately does not impose any additional requirements, because the underlying regulations are already effective under state law.

What Are the Clean Air Act Requirements?

EPA approval of this SIP revision is governed by sections 110 and 182 of the Act.

An I/M program is required in the Baton Rouge area because it is classified serious nonattainment for ozone and the population exceeds 200,000. The SIP credits are not taken for the I/M plan in the 15% Rate-of-Progress (ROP) Plan or the 9% ROP plan. However, SIP credits are taken for the I/M plan in the attainment demonstration. Additional information on these actions can be found in EPA's proposed approval of the Reasonable-Further-Progress Plan for the 1996–1999 Period in 63 FR 44192 dated August 18, 1998, and in the proposed approval of the attainment demonstration published in 67 FR 50391.

Why Is EPA Taking This Action?

We are taking this action because the State submitted an approvable enhanced vehicle I/M program SIP for the nonattainment area requiring a program.

What Effect Does This Action Have on the Sanction Clock That Was Stayed on August 10, 1999?

Final approval of the I/M SIP turns off the sanction clock that was started on February 13, 1998, the effective date of a disapproval of the I/M SIP revision submitted in 1996.

On August 20, 1999 (64 FR 45454), we published an interim final determination that the State had more likely than not corrected the deficiency that prompted the original disapproval of the Louisiana I/M SIP. We delayed taking final action on the I/M SIP submitted February 12, 1999, because EPA was in the process of amending the Federal I/M rule, and final approval of that SIP depended on the Federal I/M rule amendments.

Today's approval action is a result of the State submitting a revised I/M SIP

on December 28, 2001, which is fully approvable. Today's final approval of the I/M SIP will turn off the sanction clock because the inadequacy that started the clock has been corrected to EPA's satisfaction.

What Does the State's I/M Program Include?

The State's program requires that all 1980 and newer gasoline powered light-duty vehicles and light and heavy-duty trucks, that are registered or required to be registered in the five parish Baton Rouge nonattainment area, including fleets, are subject to annual inspection and testing.

All vehicles in the I/M program are subject to a gas cap pressure check and an antitampering inspection. In addition, all 1996 and newer vehicles will be tested with OBD.

What Did the State Submit?

The State adopted I/M SIP revision was submitted on December 28, 2001. The SIP contains a SIP narrative, I/M Rules, and several appendices including the Department of Public Safety (DPS) Manual addressing the requirements of the I/M program. The submittal is intended to fulfill the requirements of the Act for the ozone nonattainment area of Louisiana that is required to implement an I/M program.

What Comments Did EPA Receive in Response to the Proposed Rules?

No adverse comments were received. Comments in support of the I/M program were received from the Baton Rouge Clean Air Coalition and the Steering Committee of the Baton Rouge Ozone Task Force. We thank these planners for their positive comments.

EPA's Rulemaking Action

We are granting final full approval of Louisiana I/M program pursuant to sections 110 and 182 of the Act.

Administrative Requirements

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 17, 2002.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

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 T—Louisiana

2. The table in § 52.970(c) entitled ''EPA Approved Louisiana Regulations in the Louisiana SIP,'' is amended by adding to the end of the table, immediately following Section 6523, the centered heading ''LAC Title 55. Public Safety Part III. Motor Vehicles'' immediately followed by center heading ''Chapter 8. Motor Vehicle Inspection'' followed by entries for Sections 801 to 835 to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP

State citation	Title/subject	State submittal/approval date	EPA approval date	Comments
*	*	*	*	*
LAC Title 55. Part III. Motor Vehicles, Chapter 8. Motor Vehicle Inspections				
Subchapter A. General				
Section 801	Definitions	Dec. 1999, LR 25:2421	September 26, 2002 [67 FR 60594].	
Section 803	Forward	Dec. 1999, LR 25:2421	September 26, 2002 [67 FR 60594].	
Subchapter B. Safety Inspections				
Section 805	Requirements, Duties, Responsibilities	Dec. 2001, LR 27:2260	September 26, 2002 [67 FR 60594].	
Section 807	Operation as an Official Motor Vehicle Inspection Station.	Dec. 2001, LR 27:2260	September 26, 2002 [67 FR 60594].	
Section 809	General Inspection Requirements	Dec. 1999, LR 25:2426	September 26, 2002 [67 FR 60594].	
Section 811	Inspection Procedures	Dec. 1999, LR 25:2427	September 26, 2002 [67 FR 60594].	
Section 813	Required Equipment	Dec. 1999, LR 25:2428	September 26, 2002 [67 FR 60594].	
Section 815	Miscellaneous Inspection Procedures	Dec. 1999, LR 25:2433	September 26, 2002 [67 FR 60594].	
Subchapter C. Vehicle Emission Inspection and Maintenance Program				
Section 817	General Information	Dec. 1999, LR 25:2433	September 26, 2002 [67 FR 60594].	
Section 819	Anti-tampering and Inspection and Maintenance Parameters.	Dec. 2001, LR 27:2260	September 26, 2002 [67 FR 60594].	
Subchapter E. Administrative and Audit Procedures				
Section 833	Investigations; Administrative Actions; Sanctions	Dec. 2001, LR 27:2260	September 26, 2002 [67 FR 60594].	
Section 835	Declaratory Orders and Rulings	Dec. 1999, LR 25:2442	September 26, 2002 [67 FR 60594].	

* * * * *

[FR Doc. 02–24338 Filed 9–25–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. NHTSA 2002–12939; Notice 2]

RIN 2127–AI77

Schedule of Fees Authorized by 49 U.S.C. 30141

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

ACTION: Final rule.

SUMMARY: This document adopts fees for Fiscal Year (FY) 2003 and until further notice, as authorized by 49 U.S.C. 30141, relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards (FMVSS).

We are increasing the fee for the registration of a new registered importer (RI) from $584 to $655, and the annual fee for renewing an existing registration from $416 to $455. These fees include the costs of maintaining the RI program. The fee required to reimburse the U.S. Customs Service for conformance bond processing costs will increase from $5.75 to $6.20 per bond. The fee that a RI must pay as a processing cost for review of each conformity package that it submits to NHTSA will increase from $16 to $18 per certificate. However, if the vehicle has been entered electronically with the U.S. Customs Service through the Automated Broker Interface and the registered importer has an e-mail address, the fee for processing the conformity package will continue to be $6, provided that the fee is paid by credit card. If NHTSA finds that the information in the entry or the conformity package is incorrect, the processing fee will be $18, but if the importer electronically corrects that information, the processing fee will be $12.

DATES: The effective date of the final rule is October 1, 2002.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Luke Loy, Office of Vehicle Safety Compliance, Office of Safety Assurance, NHTSA (202–366–5308).

For legal issues, you may call Mr. Coleman Sachs, Office of Chief Counsel, NHTSA (202–366–5238).

SUPPLEMENTARY INFORMATION:

Introduction

The National Traffic and Motor Vehicle Safety Act, as amended by the Imported Vehicle Safety Compliance Act of 1988, and recodified as 49 U.S.C. 30141–30147 (''the Act''), provides for fees to cover the costs of the importer registration program, the cost of making import eligibility determinations, and the cost of processing the bonds furnished to the Customs Service. Certain fees became effective on January 31, 1990, and have been in effect, with modifications, since then. On June 24, 1996, we published a notice in the **Federal Register** at 61 FR 32411 that discussed the rulemaking history of 49 CFR part 594 and the fees authorized by the Act. The reader is referred to that notice for background information relating to this rulemaking action.

The Act requires us to ''review and make appropriate adjustments at least every 2 years in the amounts of the fees required to be paid. * * *'' 49 U.S.C. 30141(e). The fees applicable in any fiscal year (FY) are to be established before the beginning of such year. *Ibid.* We last amended the fee schedule in 2000. See final rule published on September 19, 2000 at 65 FR 56497. Those amendments have applied in FY 2001 and 2002. On August 16, 2002, we proposed fees that would become effective on October 1, 2002, the beginning of FY 2003 (67 FR 53552). There were no comments on this notice. As a result, we are adopting the proposal as the final rule.

The fees are based on actual time and costs associated with the tasks for which the fees are assessed, and reflect the slight increase in hourly costs in the past two fiscal years attributable to the 3.57 and 4.52 percent raises (including the locality adjustment for Washington, DC) in salaries of employees on the General Schedule that became effective, respectively, on January 1, 2001 and January 1, 2002.

Requirements of the Fee Regulation

Section 594.6—Annual Fee for Administration of the Importer Registration Program

Section 30141(a)(3) of Title 49 U.S.C. provides that RIs must pay ''the annual fee the Secretary of Transportation establishes * * * to pay for the costs of carrying out the registration program for importers * * *'' This fee is payable both by new applicants and by existing RIs. For an RI to maintain its registration, it must file a statement at the time it submits its annual fee affirming that the information it previously furnished in its registration application (or in later amendments) remains correct (49 CFR 592.5(e)).

In compliance with the statutory directive, we reviewed the existing fees and their bases for the purpose of establishing fees that would be sufficient to recover the costs of carrying out the registration program for importers for at least the next two fiscal years. The initial component of the Registration Program Fee is the fee attributable to processing and acting upon registration applications. We will increase this fee from $345 to $395 for new applications. We will increase the fee representing the review of the annual statement from $177 to $195. The adjustments reflect our recent experience in time spent reviewing both new applications and annual statements with accompanying documentation, as well as the inflation factor attributable to Federal salary increases and locality adjustments in the past two years since the regulation was last amended.

We must also recover costs attributable to maintenance of the registration program that arise from our need to review a registrant's annual statement and to verify the continuing validity of information already submitted. These costs also include anticipated costs attributable to possible revocation or suspension of registrations.

Based upon our review of the costs associated with this program, the portion of the fee attributable to the maintenance of the registration program is approximately $260 for each RI, an increase of $21. When this $260 is added to the $395 representing the registration application component, the cost to an applicant equals $655, which is the fee we are adopting. This represents an increase of $71 from the existing fee. When the $260 is added to the $195 representing the annual statement component, the total cost to the RI is $455, which represents an increase of $39.

Sec. 594.6(h) recounts indirect costs that were previously estimated at $13.90 per man-hour. This will be raised $0.95, to $14.85, based on the agency costs discussed above.

Sections 594.7, 594.8—Fees To Cover Agency Costs in Making Importation Eligibility Determinations

Section 30141(a)(3) also requires registered importers to pay ''other fees the Secretary of Transportation establishes to pay for the costs of * * * (B) making the decisions under this subchapter.'' This includes decisions on whether a vehicle sought to be imported is substantially similar to a motor vehicle originally manufactured for import into and sale in the United States, and certified as meeting the FMVSS, and whether it is capable of being readily altered to meet those standards. Alternatively, where there is no substantially similar U.S.-certified motor vehicle, the decision is whether the safety features of the vehicle comply with or are capable of being altered to comply with the FMVSS. These decisions are made in response to petitions submitted by RIs or manufacturers, or pursuant to the Administrator's initiative.

The fee for a vehicle imported under an eligibility decision made pursuant to a petition is payable in part by the petitioner and in part by other importers. The fee to be charged for each vehicle is the estimated *pro rata* share of the costs in making all the eligibility determinations in a fiscal year.

Inflation and the small raises under the General Schedule also must be taken into account in the computation of costs. However, we have been able to reduce our processing costs through combining several decisions in a single **Federal Register** notice as well as achieving efficiencies through improved word processing techniques. Accordingly, we are maintaining the fee of $175 presently required to accompany a ''substantially similar'' petition at the same level, and are also maintaining at the same level the $800 fee that accompanies petitions for vehicles that are not substantially similar and that have no U.S.-certified counterpart. In the event that a petitioner requests an inspection of a vehicle, the fee will remain at $550 for each of those types of petitions.

The importer of each vehicle determined to be eligible for importation pursuant to a petition currently must pay $125 upon its importation, the same fee applicable to those whose vehicles are covered by an eligibility determination on the agency's initiative (other than vehicles imported from Canada that are covered by vehicle eligibility numbers VSA–80 through VSA–83, for which no eligibility determination fee is assessed). The importation fee varies depending upon the basis on which the agency made the import eligibility decision. For vehicles covered by eligibility decisions resulting from petitions under 49 CFR 593.6(b), based on the safety features of the vehicle complying with, or being capable of being modified to comply with all applicable FMVSS, the fee will remain at $125. For vehicles covered by eligibility decisions resulting from petitions under 49 CFR 593.6(a), based on the substantial similarity of the

vehicle to a vehicle that was originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with all applicable FMVSS, the fee will remain at $105. Costs associated with previous eligibility decisions on the agency's own initiative will have been recovered by October 1, 2002. We will apply the fee of $125 per vehicle only to vehicles covered by decisions made by the agency on its own initiative on and after October 1, 2002.

Section 594.9—Fee To Recover the Costs of Processing the Bond

Section 30141(a)(3) also requires a registered importer to pay ''any other fees the Secretary of Transportation establishes * * * to pay for the costs of—(A) processing bonds provided to the Secretary of the Treasury'' upon the importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time or if the vehicle is not brought into compliance within such time, that it is exported, without cost to the United States, or abandoned to the United States.

The statute contemplates that we will make a reasonable determination of the cost to the United States Customs Service of processing the bond. In essence, the cost to Customs is based upon an estimate of the time that a GS–9, Step 5 employee spends on each entry, which Customs has judged to be 20 minutes.

Because of the modest salary and locality raises in the General Schedule that were effective at the beginning of 2001 and 2002, we are increasing the current processing fee by $0.45, from $5.75 per bond to $6.20.

Section 594.10—Fee for Review and Processing of Conformity Certificate

This fee requires each RI to pay $16 per vehicle to cover the cost of the agency's review of any certificate of conformity furnished to the Administrator. However, if a RI enters a vehicle with the U.S. Customs Service through the Automated Broker Interface (ABS), has an e-mail address to receive communications from NHTSA, and pays the fee by credit card, the fee is $6. Based upon an analysis of the direct and indirect costs for the review and processing of these certificates, we have found the costs for processing non-automated entries to have increased on the average of $2 per vehicle. We are therefore increasing the fee for recovering these costs to $18. Since there has been no change in the cost to the agency for processing automated entries, we are maintaining the fee for recovering these costs at the current $6 level. However, if an ABS entry contains one or more errors, the timesaving advantages of electronic entry are not realized. Accordingly, we will be assessing the full $18 fee for processing certificates based on ABS entries with one or more errors. However, if an acceptable electronic correction of the erroneous entry is sent to NHTSA, the fee will be $12 rather than $18.

EFFECTIVE DATE: NHTSA is required under 49 U.S.C. 30141(e) to ''review and make appropriate adjustments at least every 2 years in the amounts of the fees'' relating to the registration of importers and the importation of motor vehicles that are not certified as conforming to the FMVSS. The statute further requires the agency to ''establish the fees for each fiscal year before the beginning of that year.'' Fiscal year 2003 begins on October 1, 2002. In the NPRM, we proposed to make this rule effective October 1, 2002, and did not receive any comments on this issue. In order to meet the statutory deadline, the agency finds under 5 U.S.C. § 553(d)(3) that it has good cause to make this final rule effective less than thirty days after its publication in the **Federal Register**. Accordingly, the effective date of this final rule is October 1, 2002.

Rulemaking Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12886, ''Regulatory Planning and Review.'' Further, NHTSA has determined that the action is not significant under Department of Transportation regulatory policies and procedures. Based on the level of the fees and the volume of affected vehicles, NHTSA currently anticipates that the costs of the final rule will be so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. There will be no substantial effect upon State and local governments. There will be no substantial impact upon a major transportation safety program. Both the number of registered importers and determinations are estimated to be comparatively small. A regulatory evaluation analyzing the economic impact of the final rule adopted on September 29, 1989, was prepared, and is available for review in the NHTSA docket.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act (5 U.S.C. Sec. 601 *et seq.*). I certify that this action will not have a substantial economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). The amendment will primarily affect entities that currently modify nonconforming vehicles and that are small businesses within the meaning of the Regulatory Flexibility Act; however, the agency has no reason to believe that a substantial number of these companies cannot pay the fees established by this action, which are either unchanged or only modestly increased from those now being paid by these entities, and which can be recouped from their customers. Costs to owners or purchasers for the alteration of nonconforming vehicles to conform with the FMVSS may be expected to increase (or decrease) to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of carrying out the registration program and making eligibility decisions, and to compensate Customs for its bond processing costs.

Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' Executive Order 13132 defines the term ''Policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers will not vary significantly from that existing before promulgation of the rule.

E. Civil Justice Reform

This rule does not have a retroactive or preemptive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule will not have an effect of this magnitude, no Unfunded Mandates assessment has been prepared.

List of Subjects in 49 CFR Part 594

Imports, Motor vehicle safety, Motor vehicles.

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

In consideration of the foregoing, 49 CFR part 594 is amended as follows:

1. The authority citation for part 594 continues to read as follows:

Authority: 49 U.S.C. 30141, 30166; delegation of authority at 49 CFR 1.50.

2. Section 594.6 is amended by

A. Revising the introductory text of in paragraph (a),

B. Revising paragraph (b),

C. Changing the year ''2000'' in paragraph (d) to read ''2002,''

D. Revising paragraph (h); and

E. Revising paragraph (i).

The revised text reads as follows:

§ 594.6 Annual fee for administration of the registration program.

(a) Each person filing an application to be granted the status of a Registered Importer pursuant to part 592 of this chapter on or after October 1, 2002, must pay an annual fee of $655, as calculated below, based upon the direct and indirect costs attributable to: * * *

* * * * *

(b) That portion of the initial annual fee attributable to the processing of the application for applications filed on and after October 1, 2002, is $395. The sum of $395, representing this portion, shall not be refundable if the application is denied or withdrawn.

* * * * *

(h) * * * This cost is $14.85 per man-hour for the period beginning October 1, 2002.

(i) Based upon the elements, and indirect costs of paragraphs (f), (g), and (h) of this section, the component of the initial annual fee attributable to administration of the registration program, covering the period beginning October 1, 2002, is $260. When added to the costs of registration of $395, as set forth in paragraph (b) of this section, the costs per applicant to be recovered through the annual fee are $655. The annual renewal registration fee for the period beginning October 1, 2002, is $455.

3. Section 594.7 is amended by revising paragraph (e) to read as follows:

§ 594.7 Fee for filing petitions for a determination whether a vehicle is eligible for importation.

* * * * *

(e) For petitions filed on and after October 1, 2002, the fee payable for seeking a determination under paragraph (a)(1) of this section is $175. The fee payable for a petition seeking a determination under paragraph (a)(2) of this section is $800. If the petitioner requests an inspection of a vehicle, the sum of $550 shall be added to such fee. No portion of this fee is refundable if the petition is withdrawn or denied.

* * * * *

4. Section 594.8 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.

* * * * *

(c) If a determination has been made on or after October 1, 2002, pursuant to the Administrator's initiative, the fee for each vehicle is $125. * * *

5. Section 594.9 is amended by reviving paragraph (c) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs.

* * * * *

(c) The bond processing fee for each vehicle imported on and after October 1, 2002, for which a certificate of conformity is furnished, is $6.20.

6. Section 594.10 is amended by revising paragraph (d) to read as follows:

§ 594.10 Fee for review and processing of conformity certificate.

* * * * *

(d) The review and processing fee for each certificate of conformity submitted on and after October 1, 2002 is $18. However, if the vehicle covered by the certificate has been entered electronically with the U.S. Customs Service through the Automated Broker Interface and the registered importer submitting the certificate has an e-mail address, the fee for the certificate is $6, provided that the fee is paid by a credit card issued to the registered importer. If NHTSA finds that the information in the entry or the certificate is incorrect, requiring further processing, the processing fee shall be $18. However, if the importer electronically corrects the incorrect information, the processing fee shall be $12 rather than $18.

Issued on: September 19, 2002.

Annette M. Sandberg,

Deputy Administrator.

[FR Doc. 02–24309 Filed 9–25–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D.082802C]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action 10 - Adjustment of the Commercial Fishery from the U.S.-Canada Border to Cape Falcon, OR

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

ACTION: Adjustments; request for comments.

SUMMARY: NMFS announces that the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR was modified to reopen on August 9, 2002, and close at midnight, August 18, 2002, with a vessel limit of 400 chinook salmon for the entire 10–day open period. In addition, the gear restriction

limiting fishers to no more than four spreads per line between Cape Falcon, OR and Leadbetter Point, WA was suspended for the open period. All other restrictions and regulations remain in effect as announced for 2002 ocean salmon fisheries. The Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that these management measures should be implemented to provide fishers greater access to the chinook and coho quotas. This action was necessary to conform to the 2002 management goals.

DATES: Adjustments in the area from the U.S.-Canada Border to Cape Falcon, OR, effective 0001 hours local time (l.t.), August 9, 2002, through 2359 hours l.t. August 18, 2002, after which the fishery will remain closed until opened through an additional inseason action, which will be published in the **Federal Register** for the west coast salmon fisheries, or until the effective date of the year 2003 management measures. Comments will be accepted through October 11, 2002.

ADDRESSES: Comments on these actions must be mailed or faxed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115–0070, facsimile 206–526–6376; or

Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132, facsimile 562–980–4018.

Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator modified the season for the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR to reopen on August 9, 2002, and close at midnight, August 18, 2002, with a vessel limit of 400 chinook salmon for the entire 10–day open period. In addition, the gear restriction limiting fishers to no more than four spreads per line between Cape Falcon, OR and Leadbetter Point, WA was suspended for the open period. Information provided on August 8 regarding the available catch and effort data indicated that these management measures should be implemented to allow fishers to fully access the chinook and coho quotas. Modification of fishing seasons and gear restriction are authorized by regulations at 50 CFR 660.409(b)(1)(i) and 50 CFR 660.409(b)(1)(iv), respectively.

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced that the commercial fishery for all salmon except coho in the area from the U.S.-Canada Border to Cape Falcon, OR would open July 1, 2002, and run through the earlier of September 8, 2002, or a 32,500–chinook quota, except for a selective fishery for marked coho in the sub-area from Leadbetter Point, WA to Cape Falcon, OR scheduled at the end of the season with a 5000–marked coho quota.

The fishery in the area from the U.S.-Canada Border to Cape Falcon, OR has been modified three times so far this year by inseason action. The first inseason action opened the fishery as scheduled on July 1, 2002, but modified it to close at midnight, July 8, 2002, with the provision that no vessel may possess, land, or deliver more than 250 chinook for the entire 8–day open period (67 FR 47334, July 18, 2002). The second inseason action reopened the area on July 12, 2002, and closed it at midnight, July 22, 2002, with the provision that no vessel may possess, land, or deliver more than 400 chinook for the entire 11–day open period (67 FR 49875, August 1, 2002). The third inseason action reopened the area on July 26, 2002, and closed it at midnight, August 5, 2002, with the provision that no vessel may possess, land, or deliver more than 500 chinook salmon for the entire 11–day open period (67 FR 52889, August 14, 2002). These modifications to the fishing season were adopted to avoid closing the fishery early due to reaching the chinook quota, thus precluding the opportunity to catch available marked hatchery coho salmon later in the season.

On August 8, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife (ODFW) by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that it was likely that the chinook quota would be reached prematurely unless adequately controlled, potentially foreclosing opportunity of fishers to conduct the selective fishery for marked coho later in the season. As a result, the states of Washington and Oregon recommended, and the Regional Administrator concurred, that the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR would reopen on August 9, 2002, and close at midnight, August 18, 2002, with the provision that no vessel may possess, land, or deliver more than 400 chinook for the entire 10–day open period. In addition, the gear restriction limiting fishers to no more than four spreads per line between Cape Falcon, OR and Leadbetter Point, WA was suspended for the open period, because this was no longer needed to restrict the catch of coho. All other restrictions that apply to this fishery remain in effect as announced in the 2002 annual management measures. The State of Oregon continued the landing restriction for this fishery in their regulations requiring that fishers fishing north of Cape Falcon, OR and intending to land salmon south of Cape Falcon, OR notify the ODFW before they leave the area at the telephone number: (541) 867–0300, Ext. 252. In addition, the parties agreed to reevaluate the fishery on August 21, 2002, and assess the possibility of further openings.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the effective date by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), or delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553(d)(3), because prior notice and opportunity for public comment and delay in effectiveness of this rule is impracticable and contrary to the public interest. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast

Salmon Plan. Prior notice and opportunity for public comment is impracticable because NMFS and the state agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the status of the fisheries and the time the limits to which the fishery must be adjusted to control harvest rates in the fishery must be in place. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because it does not allow commercial fishermen appropriately controlled access to the available fish at the time they are available.

The AA finds good cause to waive the 30–day delay in effectiveness required under 5 U.S.C. 553(d)(3). A delay in effectiveness of this action would not allow commercial fishermen appropriately controlled access to the available fish at the time they are available.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 19, 2002

Virginia M. Fay,

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

[FR Doc. 02–24371 Filed 9–25–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020920218–2218–01; 091902C]

RIN 0648–AQ47

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Reallocation of Pacific Sardine

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

ACTION: Emergency rule, Reallocation of Pacific sardine.

SUMMARY: NMFS announces the reallocation of the remaining Pacific sardine harvest guideline in the U.S. exclusive economic zone off the Pacific coast. The Coastal Pelagics Species Fishery Management Plan (FMP) requires that NMFS conduct a review of the fishery 9 months after the beginning of the fishing season on January 1, and reallocate any unharvested portion of the harvest guideline, with 50 percent allocated north and south of Pt. Piedras Blancas, California. The allocation north of Pt. Piedras Blancas was reached on September 14, 2002, and the fishery was closed until the scheduled time for reallocation on October 1, 2002. This action reallocates the remainder of the harvest guideline earlier than the date specified in the FMP in order to minimize the negative economic effects on fishing and processing, primarily in the Pacific northwest, that would result from delaying the reallocation.

DATES: Effective September 20, 2002 to December 31, 2002.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, 562–980–4036.

SUPPLEMENTARY INFORMATION: On December 27, 2001, NMFS published a notification of a harvest guideline of 118,442 mt for Pacific sardine in the **Federal Register** (66 FR 66811) for the fishing season January 1, 2002, through December 31, 2002. The harvest guideline was allocated as specified in the FMP, that is, one-third (39,481 mt) for Subarea A, which is north of 35° 40′ N. lat. (Pt. Piedras Blancas, California) to the Canadian border; and two-thirds (78,961 mt)for Subarea B, which is south of 35° 40′ N. lat. to the Mexican border.

Section 5.2.2 of the FMP requires that the NMFS, Southwest Regional Administrator, (1) conduct a review of the fishery 9 months after the beginning of the fishing season, and (2) reallocate the total unharvested portion of the harvest guideline, if any, equally between Subarea A and Subarea B. However, this year, the allocation to Subarea A was harvested by September 14, 2002, and the fishery was closed (67 FR 58733).

At its September 2002 meeting, the Pacific Fishery Management Council (Council) received a report on the status of the sardine fishery and heard public comments regarding the effects of closing the fishery in Subarea A and waiting for reallocation to occur on October 1, 2002. The fishing industry in the Pacific northwest has the capacity and the markets to continue fishing operations. Weather conditions tend to deteriorate in the Pacific northwest this time of year and fishery virtually ends around October 1, 2002; therefore, delaying reallocation will have a negative economic impact on the industry at a time when there is adequate resource available for all users. Based on this information, the Council determined, by majority vote, that an emergency existed and recommended to NMFS that emergency action be taken to reallocate the available resource before the date specified in the FMP.

The harvest guideline is not likely to be reached by the end of the fishing season on December 31, 2002; however, allocating the unharvested portion earlier than the scheduled date so that existing markets can be satisfied will increase the likelihood of achieving optimum yield. As long as the harvest guideline is not exceeded, there will be no impact on the status of the resource.

A total of 39,481 mt has been landed in Subarea A. A total of 31,671 mt has been landed in Subarea B. Based on this data, 47,290 mt remains of the 118,442–mt harvest guideline. Therefore, 23,645 mt is allocated north of Pt. Piedras Blancas (Subarea A) and 23,645 is allocated south of Pt. Piedras Blancas (Subarea B).

Classification

The Assistant Administrator for Fisheries, NMFS, finds that early reallocation of Pacific sardine available for harvest avoids an unnecessary economic hardship and therefore constitutes good cause to waive the requirement to provide prior notice and the opportunity for public comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B). Keeping the fishery operating would likely increase landings of between 5,000 and 10,000 mt the rest of the year in Oregon and Washington. At an ex-vessel price of $100/mt this would generate between $500,000 and $1 million in revenues for fishermen. There is about a 50 percent recovery rate for processed product (most of which is packed as bait), and, at a sales price of $400/mt), the revenues to processors would be between $1 million and $2 million. While firm employment figures are not available, it is estimated that as many as 500 or more employees work on sardine processing lines. They would continue working for two weeks or more if the weather holds up to support fishing. At $7/hour (the estimated prevailing wage rate in these communities), or $60 per week, this would provide income of between $30,000 and $60,000 in direct payments to labor for the one or two-week period. Such communities generally have income multipliers in the area of 2.5 to 3.0; therefore, the direct income to fishermen and to processing line employees would translate to several million in overall income impacts for the local communities.

Because this is a substantive rule that relives a restriction, the 30 day delayed effectiveness provision of the Administrative Procedure Act does not apply.

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

This emergency rule is exempt from the analysis required by the Regulatory Flexibility Act because the rule is not subject to the notice and comment provisions of the Administrative Procedure Act 5 U.S.C. 553.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 20, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–24389 Filed 9–20–02; 4:08 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 091902D]

Fisheries of the Exclusive Economic Zone Off Alaska; Trawl Gear in the Chum Salmon Savings Area of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting fishing with trawl gear in the Chum Salmon Savings Area of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 limit of non-chinook salmon caught by vessels using trawl gear in the Catcher Vessel Operation Area (CVOA).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 21, 2002, until 1200 hrs, A.l.t., October 14, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 limit of non-chinook salmon caught by vessels using trawl gear for the CVOA, is 42,000 animals, § 679.21(e)(7)(vii). The CVOA is defined as that part of the BSAI that is south of 56°00′ N. lat. and between 163°30′ W. long. and 167°30′ W. long. (Figure 2 to 50 CFR part 679).

In accordance with § 679.21(e)(7)(vii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 limit of non-chinook salmon caught by vessels using trawl gear in the CVOA has been reached. Consequently, the Regional Administrator is prohibiting fishing with trawl gear in the Chum Salmon Savings Area defined at Figure 9 to 50 CFR part 679.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2002 limit of non-chinook salmon caught by vessels using trawl gear in the CVOA, and therefore reduce the public's ability to use the fishery resource.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 20, 2002.

Virginia M. Fay,

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

[FR Doc. 02–24369 Filed 9–20–02; 4:24 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 091902E]

Fisheries of the Exclusive Economic Zone Off Alaska; Thornyhead Rockfish in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of thornyhead rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of thornyhead rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the 2002 total allowable catch (TAC) specified for thornyhead rockfish in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 21, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, or *mary.furuness@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 2002 TAC allocation of thornyhead rockfish for the Western Regulatory Area was established as 360 metric tons by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002 and 67 FR 34860, May 6, 2002).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the 2002 TAC specified for thornyhead rockfish in the Western Regulatory Area of the GOA has been achieved. Therefore, NMFS is

requiring that further catches of thornyhead rockfish in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to overharvesting the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 20, 2002.

Virginia M. Fay,

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

[FR Doc. 02–24368 Filed 9–20–02; 4:24 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 67, No. 187

Thursday, September 26, 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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 740

Accuracy of Advertising and Notice of Insured Status

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The NCUA Board proposes revising its rule governing advertising and the requirements for use of the official sign and official advertising statement regarding insured status. The purpose of the revision is to modernize the rule to address the growing use of the Internet for member transactions, the use of trade names, and clarify and streamline the existing rule for ease of reference.

DATES: Comments must be received on or before November 25, 2002.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may fax comments to (703) 518–6319. E-mail comments to *regcomments@ncua.gov. Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

The NCUA Board (Board) is proposing to revise its regulation concerning an insured credit union's (CU's) advertising practices and use of the official sign and official advertising statement to notify members of the CU's insured status. The NCUA policy to review regulations periodically to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions'' prompted this revision. Interpretive Ruling and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations.

Trade Names

NCUA's Office of General Counsel (OGC) has issued several opinions interpreting Part 740 to permit CUs to use trade names in advertising. Several CUs have written to the OGC concerning the use of trade names in advertising. Some CUs prefer to use a trade name or signage with a name other than the official charter name. In one case, an OGC opinion approved the use of a trade name that is an abbreviation of the official charter name. To foster member recognition, another OGC opinion approved the use of a second name, other than the official charter name, to reflect the trade name of a sponsor. In yet another case, an OGC opinion permitted the use of a trade name that did not include the words, ''federal credit union.'' Since OGC has received multiple questions from CUs on this issue, the Board has determined that it could make the rule more informative by incorporating the OGC's interpretations into the regulatory text. Similarly, NCUA has issued guidance to CUs on the use of more than one name. NCUA Letter to Credit Unions No. 99–CU–17 (October 1999).

While the use of more than one name or a trade name in advertisements is acceptable, a CU must use its official charter name in all official or legal documents and in communications with NCUA. Of utmost concern to NCUA is that the use of a trade name does not confuse members about the level of share insurance applicable to their accounts. For that reason, a CU using a trade name or a second name must use its official charter name on consumer disclosures, contracts, titles, liens, stocks or other documents that set out legal responsibilities or obligations. It must also ensure that its staff advises new members that accounts opened or deposits made in branches or facilities with different names are not separately insured. A CU must also ensure that it does not violate the rights of another party in a trade name. For ease of reference, the proposal revises § 740.2 to clarify that it does not prohibit the use of trade or second names, but that CUs must use the official charter name in legal documents.

Internet

Currently, over 40 percent of all federally insured credit unions have a web site and almost half offer members the ability to perform transactions. Since increasing numbers of CUs are using the Internet to advertise their services and conduct transactions with members, the Board is concerned that members receive adequate notice about the availability of federal share insurance when they use the Internet to engage in transactions. Part 740 requires CUs to display the official sign at each station or window where insured account funds or deposits are usually received. 12 CFR 740.3. It also requires CUs to include the official advertising statement in advertisements. The proposal revises this provision to address the use of the official advertising sign and official advertising statement on the Internet more clearly.

NCUA is aware that CUs use the Internet to offer services to current members and to invite new members to join. This does not differ from advertising on television, radio or newspapers. To the extent Part 740 requires a CU to include the official advertising statement in advertisements in other media, the NCUA Board believes it should also require it for advertisements on the Internet. The proposal would require CUs to display the official advertising statement on their main or home page at minimum. Further, many CUs have links from their main or home page to subsidiary pages where a member may conduct transactions, such as deposits or fund transfers, and where nonmembers may apply for membership. These pages are analogous to a teller window or station at a CU office. The proposal would also require the CU to display the official sign on all subsidiary pages where a member may transfer or deposit funds or open an account.

The Board notes that most CUs operating Internet sites already display the official sign and advertising statement in this manner and is pleased that the proposal will not add a significant regulatory burden.

Since advertising on the Internet is so closely analogous to advertising in other media, the Board believes the requirement in § 740.2 for accuracy in advertising should also apply to electronic advertisements. The proposal,

therefore, amends § 740.2 to include electronic media.

Other proposed changes to the regulation are minor and editorial. For example, the proposal retitles the rule to reflect the content more clearly. It also reorganizes § 740.2 into two sections for clarity and ease of reference. In the proposal, § 740.2 covers accuracy in advertising and the new § 740.3 covers advertising of excess insurance. Finally, without changing the meaning, the proposal clarifies and simplifies the language of the rule and headings by reducing excess verbiage and rewording it in a plain English style.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small entities (primarily those under one million dollars in assets). This proposed rule will not have a significant economic impact on a substantial number of small credit unions, and therefore, no regulatory flexibility analysis is required.

Paperwork Reduction Act

NCUA has determined that the proposed rule does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed rule, if adopted, will apply to both federal and state credit unions. It does not, however, significantly change the current regulatory framework. It 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. NCUA has determined that the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 740

Advertisements, Credit unions.

By the National Credit Union Administration Board on September 19, 2002.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, NCUA proposes to revise 12 CFR part 740 as follows:

PART 740—ACCURACY OF ADVERTISING AND NOTICE OF INSURED STATUS

Sec.

740.0 Scope.
740.1 Definitions.
740.2 Accuracy of advertising.
740.3 Advertising of excess insurance.
740.4 Requirements for the official sign.
740.5 Requirements for the official advertising statement.

Authority: 12 U.S.C. 1766, 12 U.S.C. 1781, 12 U.S.C. 1789.

§ 740.0 Scope.

This part applies to all federally insured credit unions. It prescribes the requirements for the official sign insured credit unions must display and the requirements with regard to the official advertising statement insured credit unions must include in their advertisements. It requires that all other kinds of advertisements be accurate. It also establishes requirements for advertisements of excess insurance.

§ 740.1 Definitions.

(a) *Account* or *accounts* as used in this part means share, share certificate or share draft accounts (or their equivalent under state law, as determined by the Board in the case of insured state credit unions) of a member (which includes other credit unions, public units, and nonmembers where permitted under the Act) in a credit union of a type approved by the Board which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member.

(b) *Insured credit union* as used in this part means a credit union insured by the National Credit Union Administration (NCUA).

§ 740.2 Accuracy of advertising.

No insured credit union may use any advertising (which includes print, electronic, or broadcast media, displays and signs, stationery, and other promotional material) or make any representation which is inaccurate or deceptive in any particular, or which in any way misrepresents its services, contracts, or financial condition, or which violates the requirements of § 707.8 of this subchapter, if applicable. This provision does not prohibit an insured credit union from using a trade name or a name other than its official charter name in advertising or signage, so long as it uses its official charter name in communications with NCUA and for certificates of deposit, signature cards, loan agreements, account statements, checks, drafts and other legal documents.

§ 740.3 Advertising of excess insurance.

Any advertising that mentions share or savings account insurance provided by a party other than the NCUA must clearly explain the type and amount of such insurance and the identity of the carrier and must avoid any statement or implication that the carrier is affiliated with the NCUA or the federal government.

§ 740.4 Requirements for the official sign.

(a) Each insured credit union must continuously display the official sign described in paragraph (b) of this section at each station or window where insured account funds or deposits are normally received in its principal place of business and in all its branches, and on its Internet page, if any, where it accepts deposits or open accounts, 30 days after its first day of operation as an insured credit union.

(b) The official sign shall be as depicted below, having a blue background with white lettering:

BILLING CODE 4910–15–P

Your savings federally insured to $100,000

NCUA

National Credit Union Administration, a U.S. Government Agency

BILLING CODE 4910–15–C

(1) NCUA will automatically supply all insured credit unions an initial supply of official signs at no cost for compliance with paragraph (a) of this section. If the initial supply is not adequate, the insured credit unions must immediately request additional signs from NCUA. Any credit union that does not have an adequate supply but requests additional signs from NCUA will not be considered to have violated paragraph (a) of this section unless the credit union fails to display the signs after receiving them.

(2) Insured credit unions may purchase additional signs from commercial suppliers in additional colors, materials and sizes, for uses other than those required by paragraph (a) of this section.

(c) An insured credit union must not receive account funds at any teller's station or window where any noninsured credit union or institution receives deposits. Excepted from this prohibition are credit union centers, service centers, or branches servicing more than one credit union where only some of the credit unions are insured by the NCUA. In such instances, immediately above or beside each official sign there must be another sign stating, ''Only the following credit unions serviced by this facility are federally insured by the NCUA_____'' (the full name of each credit union insured will follow the word NCUA). The lettering must be of such size and print to be clearly legible to all members conducting share or share deposit transactions.

(d) The Board may require any insured credit union, upon at least 30 days' written notice, to change the wording of its official signs in a manner deemed necessary for the protection of shareholders or others.

(e) For purposes of this section, the terms ''branch,'' ''station,'' ''teller station,'' and ''window'' do not include automated teller machines or point of sale terminals.

§ 740.5 Requirements for the official advertising statement.

(a) Each insured credit union must include the official advertising statement, prescribed in paragraph (b) of this section, in all of its advertisements, including on its main Internet page, except as provided in paragraph (c) of this section.

(1) An insured credit union must include the official advertising statement in its advertisements thirty (30) days after its first day of operations as an insured credit union unless the Regional Director grants it an extension.

(2) In cases where advertising copy not including the official advertising statement is on hand on the date the requirements of this section become operative, the insured credit union may use an overstamp or other means to include the official advertising statement until the supplies are exhausted.

(b) The official advertising statement is in substance as follows: This credit union is federally insured by the National Credit Union Administration. The short title ''Federally insured by NCUA'' and a reproduction of the official sign may be used by insured credit unions at their option as the official advertising statement. The official advertising statement must be in a size and print that is clearly legible.

(c) The following advertisements need not include the official advertising statement:

(1) Statements of condition and reports of condition of an insured credit union which are required to be published by state or federal law or regulation;

(2) Credit union supplies such as stationery (except when used for circular letters), envelopes, deposit slips, checks, drafts, signature cards, account passbooks, and noninsurable certificates;

(3) Signs or plates in the credit union office or attached to the building or buildings in which the offices are located;

(4) Listings in directories;

(5) Advertisements not setting forth the name of the insured credit union;

(6) Display advertisements in credit union directories, provided the name of the credit union is listed on any page in the directory with a symbol or other descriptive matter indicating it is insured;

(7) Joint or group advertisements of credit union services where the names of insured credit unions and noninsured credit unions are listed and form a part of such advertisement;

(8) Advertisements by radio that do not exceed thirty (30) seconds in time;

(9) Advertisements by television, other than display advertisements, that do not exceed thirty (30) seconds in time;

(10) Advertisements that because of their type or character would be impractical to include the official advertising statement, including but not limited to, promotional items such as calendars, matchbooks, pens, pencils, and key chains;

(11) Advertisements that contain a statement to the effect that the credit union is insured by the National Credit Union Administration, or that its accounts and shares or members are

insured by the Administration to the maximum of $100,000 for each member or shareholder;

(12) Advertisements that do not relate to member accounts, including but not limited to advertisements relating to loans by the credit union, safekeeping box business or services, traveler's checks on which the credit union is not primarily liable, and credit life or disability insurance.

(d) The non-English equivalent of the official advertising statement may be used in any advertisement provided that the Regional Director gives prior approval to the translation.

[FR Doc. 02–24289 Filed 9–25–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

Requirements for Insurance

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: The National Credit Union Administration (NCUA) is proposing a regulation on the requirements for federally-insured credit unions that wish to branch outside the United States. The proposed rule requires a credit union to develop a business plan and receive foreign government and NCUA approval before establishing a branch outside the United States.

DATES: The NCUA must receive comments on or before December 26, 2002.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or you may fax comments to (703) 518–6319 or e-mail comments to *regcomments@ncua.gov. Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Senior Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540 or Lynn Markgraf, Program Officer, Office of Examination and Insurance, at the above address or telephone: (703) 518–6360.

SUPPLEMENTARY INFORMATION: On September 7, 2000, the Board issued an advance notice of proposed rulemaking (ANPR) on whether NCUA should insure state-chartered credit unions that branch outside the United States. 65 FR 55464 (September 14, 2000). The comment period ended on November 14, 2000. The key issues raised in the ANPR included NCUA Board policy considerations, legal concerns, supervision and examination considerations, options for insuring foreign branches of state-chartered credit unions and options for restricting insurance coverage for state-chartered credit unions operating foreign branches.

The NCUA Board stated in the ANPR that it was considering numerous options to address the issues raised by state-chartered credit unions branching outside the United States. One option discussed was to permit federally-insured, state-chartered credit unions to serve foreign nationals in their fields of membership on the same terms currently permitted for federal credit unions. That is, foreign nationals in the field of membership could be served pursuant to an approved business plan, with branches being limited to U.S embassies and U.S. military instillations. A second option discussed insuring state-chartered credit unions that operate foreign branches, but with regulatory limitations designed to mitigate risk to the National Credit Union Share Insurance Fund (NCUSIF). The following were the limitations, among others, that the Board stated it might consider:

- Allow foreign branches for the purpose of serving employees of U.S. or international organizations in a credit union's field of membership, but prohibit select employee group expansions or other expansion based on the foreign branch;
- Provide that accounts at foreign branches are not insured or give credit unions the option to insure those accounts;
- Require a separate application for insurance for foreign branch operations with the factors to be considered enumerated in NCUA's regulations;
- Limit the amount of total loans, issued at a foreign branch, in relation to insured and uninsured shares at the foreign branch;
- Require specific, minimum capital amounts based on the size of the loan portfolio and require mandatory charge-offs of loans more than 120 days past due; and
- Limit the amount of loans to foreign nationals outside the United States to the uninsured deposits at the foreign branch. Uninsured shares would act as the primary offset for loan loses after capital reserved for the branch is depleted.

The NCUA Board has decided not to propose any of these regulatory limitations but rather to propose a more streamlined and less intrusive approach that still maintains safety and soundness. As discussed below, the NCUA Board is proposing a simple approval process that requires a credit union to obtain host country approval and develop a comprehensive business plan in order to obtain NCUA approval to establish a branch in a foreign country.

Legal Background

The Federal Deposit Insurance Corporation (FDIC) reviews the insurance application for each branch located outside the United States. When reviewing an insurance application for foreign banks or foreign branches, FDIC must consider:

(1) The financial history and condition of the bank,

(2) The adequacy of its capital structure,

(3) Its future earnings prospects,

(4) The general character and fitness of its management, including but not limited to the management of the branch proposed to be insured,

(5) The risk presented to the Bank Insurance Fund or the Savings Association Insurance Fund,

(6) The convenience and needs of the community to be served by the branch,

(7) Whether or not its corporate powers, insofar as they will be exercised through the proposed insured branch, are consistent with the purposes of [the FDIC] Act, and

(8) The probable adequacy and reliability of information supplied and to be supplied by the bank to the Corporation to enable it to carry out its functions under [the FDIC] Act.

12 U.S.C. 1815(b). This review is similar to NCUA's review of an insurance application under the Federal Credit Union Act (Act). 12 U.S.C. 1781(c)(1).

Bank and thrift deposits held outside the United States are not insured unless the financial institution has an express agreement with the depositor. The term ''deposit'' is defined to exclude:

> [A]ny obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State, unless—
>
> (i) such obligation would be a deposit if it were carried on the books and records of the depository institution, and would be payable at, an office located in any State; and
>
> (ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State.

12 U.S.C. 1813(l)(5)(A). An account in a foreign branch of an FDIC-insured branch is a ''deposit'' and insured only if it meets the above exception to the

exclusion. The general practice in the banking industry is to establish accounts in foreign branches as uninsured accounts.

There is no comparable definition of deposit or share account in the Act or NCUA's regulations that provides a credit union with the ability to choose whether a foreign share account is federally-insured. Therefore, without a regulatory change, if a federally-insured, state-chartered credit union opens a branch office outside the United States, the member share accounts at that branch would be federally-insured.

Section 201(c)(1) of the Act authorizes NCUA to determine insurability of accounts of federally-insured, state-chartered credit unions. 12 U.S.C. 1781(c)(1). It states, in part, that the NCUA Board must disapprove the application of any credit union for insurance of its member accounts if it finds that:

> [I]nsurance of its member accounts would otherwise involve undue risk to the fund, or that its powers and purposes are inconsistent with the promotion of thrift among its members and the creation of a source of credit for provident or productive purposes.

Comments

Nineteen comments were received. Comments were received from four federal credit unions, three state-chartered credit unions, seven state leagues, four credit union trade associations, and one research institute. In general, the commenters believed NCUA needs to address the multitude of issues raised by foreign branching. Some commenters addressed the safety and soundness concerns raised in the ANPR, with most of these commenters stating that the safety and soundness issues are not insurmountable. Three commenters stated that NCUA should not encroach upon the authority of state regulators to oversee the operations of state-chartered credit unions. Some commenters recommended that NCUA work with state regulators to develop insurance requirements that mitigate risks associated with foreign branching while preserving the ability for qualified credit unions to operate foreign branches.

Previously Discussed Options

Only Permit Federally-Insured State-Chartered Credit Unions To Serve Foreign Nationals in Their Fields of Membership on the Same Terms Currently Permitted for Federal Credit Unions

Eight commenters opposed any provision imposing field of membership limits upon state credit unions, either inside or outside the United States. Most of these commenters believe that a state-chartered credit union should have the authority to establish branches outside of the United States consistent with the laws enacted by its state legislature. Five commenters stated that select group expansions around a stated-chartered credit union's foreign branch should not be permitted.

Two commenters approved of this restrictive field of membership option because of the risks described in the ANPR. One of these commenters also stated that, if this option is not accepted by NCUA, the agency should consider imposing additional requirements similar to those of the Federal Reserve's Regulation K.

Other Regulatory Limitations

Eleven commenters stated that NCUA should adopt policies and procedures similar to those established by the Federal Reserve Act and FDIC deposit insurance requirements, with regulatory limitations designed to mitigate risk to the NCUSIF. Two commenters proposed minimum capital requirements that were significantly less than one million dollars. One commenter believes there should be specific, minimum capital amounts based on the size of the loan portfolio. One commenter would require foreign branches to adhere to a perceived international standard ''of a minimum capital base (excluding ownership shares) of ten percent of total assets.'' One commenter stated that NCUA should establish minimum capital levels in relation to total assets and loans and receivables from foreign nationals. Four commenters opposed minimum capital standards for foreign branches.

Seven commenters specifically stated that NCUA should approve any branch that is to be operated outside the United States. One commenter disapproved of prior NCUA approval since this commenter believes this is the state regulator's responsibility.

Four commenters opposed mandatory charge-offs beyond 120 days. Six commenters opposed limiting the aggregate loan amount to the amount of uninsured deposits at the foreign branch.

One commenter stated that only well capitalized, adequately insured credit unions with the ability to audit foreign operations should be allowed to branch outside the United States. One commenter supports the use of opinion audits for all credit unions, regardless of size, that have foreign branches not located on a U.S. military instillation or in a U.S. territory. One commenter believes that, instead of an opinion audit, a good internal audit should suffice.

One commenter believes NCUA should require a specific plan for addressing foreign currency risk to be enumerated in an NCUA-approved business plan. One commenter stated that NCUA should impose additional regulatory requirements if the NCUA Board decides to insure shares held by the foreign branches of state-chartered credit unions. One commenter stated that the agency should not mandate any specific regulatory requirements for credit unions with foreign branches that do not currently exist for domestic credit unions. One commenter stated that, as the costs of regulation increase, state-chartered credit unions with foreign branches should pay incrementally higher percentages of their assets to the NCUSIF to cover the additional risks associated with these ventures.

Deposit Insurance

One commenter stated that the Board should adopt the FDIC definition of ''deposit'' for defining ''share'' and provide that only shares are eligible for insurance coverage. Two commenters believe that NCUA has the authority to permit deposits outside the U.S. to be either insured or not insured. These commenters urged NCUA to permit state-chartered credit unions to offer foreign accounts that are not insured. Another commenter stated that member accounts in foreign branches should not be insured by the NCUSIF. Five commenters stated that NCUA should either not insure foreign deposits or provide an option for insurance. One commenter would oppose any requirement that share deposits from members outside the U.S. be insured by the NCUSIF and encouraged NCUA to adopt flexible regulatory language allowing federally-insured, state-chartered credit unions to open insured and uninsured accounts at foreign branches.

One commenter favors NCUSIF insuring deposits in overseas branches of credit unions given appropriate safeguards. One commenter believes that credit unions should maintain deposit insurance although this commenter is not sure it would be prudent for the NCUA to refrain from requiring insurance through the NCUSIF. One commenter stated that member shares, regardless of the location of the branch in which transactions occur, should be insured.

Two commenters would require a separate application for foreign branch insurance coverage. One commenter did not approve of an application for

separate insurance coverage. One commenter stated that, for occupational or employee credit unions, insurance coverage should be limited to deposits of foreign national members closely associated with the credit union's sponsor or sponsors. One commenter believes state-chartered credit unions should have the option to federally insure accounts pursuant to the requirements of each foreign nation in which they operate branches. This commenter also stated that credit unions utilizing the NCUSIF should bear the additional costs associated with providing federal insurance in a foreign nation to compensate NCUA.

Proposed Rule

After carefully considering the comments and discussing the issues with state regulators, the NCUA Board has decided to propose a rule that is similar to Regulation K but is tailored to the unique nature of credit unions. NCUA is proposing a three-step process.

First, the credit union needs to receive written approval from the host country to establish the branch that explicitly recognizes NCUA's authority to examine and take any enforcement action with regard to that branch office, including conservatorship and liquidation actions. If a credit union is state-chartered, it must also obtain written approval from the state supervisory agency and submit it with the application.

Second, a credit union must develop a detailed business plan that addresses the following: (1) Analysis of market conditions in the area the branch is to be established; (2) the credit union's plan for addressing foreign currency risk; (3) operating facilities, including office space, equipment and supplies; (4) safeguarding of assets, insurance coverage, and records preservation; (5) written policies regarding the branch (shares, lending, capital, charge-offs, collections); (6) the field of membership or portion of the field of membership to be served through the foreign branch and the financial needs of the members to be served and services and products to be provided; (7) detailed *pro forma* financial statements for branch operations (balance sheet and income and expense projections) for the first and second year, including assumptions; (8) internal controls, including cash disbursal procedures for shares and loans at the branch; (9) accounting procedures used to identify branch activity and performance; and (10) foreign income taxation.

Third, the credit union must submit documentation showing host country approval, state regulator approval if applicable, and the business plan to NCUA and receive NCUA approval before establishing the branch office.

The regional director has 60 days to approve the application but may extend the time period for good cause. The regional director may revoke approval of the branch office for failure to follow the business plan in any material respect or for substantive and documented safety and soundness reasons. If the credit union wants to make a material deviation from its previously approved business plan, it should submit a new business plan for approval. If the regional director revokes the approval, the credit union will have six months from the date of the revocation letter to terminate the operations of the branch. The credit union can appeal this revocation directly to the NCUA Board.

The NCUA Board has decided not to propose any field of membership restrictions on the foreign branch or capital requirements above those required by the Prompt Corrective Action rule. 12 CFR Part 702. However, the business plan must specifically address the field of membership to be served by the foreign branch. The NCUA Board believes this proposal will minimize risk without interfering with the operations of a credit union or its plans to serve its membership. The Board reviewed all of the available options and believes this course of action is the least burdensome to credit unions while still maintaining safety and soundness. If this proposal is adopted in final, the NCUA Board will monitor the performance and safeguards of foreign branches through its examination functions to ensure this approach continues to minimize risk and maintains safety and soundness, without unduly hindering the business decisions of credit unions.

The Board wishes to clarify that a representation office or a liaison office is not a branch office as defined by NCUA. It is the Board's understanding that such offices do not engage in processing loan applications and do not disburse loans. Rather loan documents are transferred from the liaison office to the credit union's main office in the United States where loan decisions are made and loan disbursals are made in U.S. dollars. For purpose of this regulation, such liaison or representation offices are not considered a branch.

On the issue of insurance, if there are no changes to NCUA's insurance regulation, a federally-insured credit union that opens a branch office outside the United States would have its member share accounts at that branch federally-insured. However, the NCUA Board is still reviewing this issue. In some cases, host-country laws may require that accounts opened and payable at the foreign branch be denominated in local currency and insured by the host country's insurance system. It would be unnecessary and inappropriate for these accounts to be NCUSIF insured as well. The NCUA Board is considering following a modified version of the FDIC rule on insurance coverage. Specifically, the credit union's business plan would be required to address the insured status of member accounts and, in any event, accounts would be NCUSIF insured only if denominated in U.S. dollars and only payable, by the term of the account agreement, at a U.S. office of the credit union. If the host country requires insurance from its own system, such accounts will not be insured by the NCUSIF. The NCUA Board seeks comment, on this proposal or any other alternative for addressing NCUSIF coverage related to foreign branching and accounts opened and maintained at a foreign branch.

Miscellaneous

Six commenters requested that federal credit unions be able to establish foreign branches on foreign soil for the purpose of serving foreign nationals. They request that NCUA reevaluate its policy on foreign branching by federal credit unions. Some of these commenters want to open branches to serve employees of their select employee groups. Although federal credit unions can now serve these foreign nationals of their sponsors overseas, they are limited in the location of their foreign branches.

The Board is seeking comment on whether to apply the same requirements for federal credit unions as it does for state credit unions regarding foreign branching. That is, whether the Board should remove the limitation on the location of foreign branches imposed by NCUA's Chartering and Field of Membership Manual and, instead, require federal credit unions to follow the requirements of this proposed rule. If the NCUA Board decides to apply this rule to federal credit unions in the final rule, it will simultaneously amend Interpretive Ruling and Policy Statement 99–1 to conform it to this rule.

Finally, the Board is aware if it allows this activity that NCUA's current investment rule (Part 703) may not authorize sufficient investment tools to manage currency risk. For example, the Board is sensitive to the risk of currency fluctuations in making Euro denominated loans. The Board is reviewing the investment rule and will

address the issue of currency risk when a revised investment rule is proposed in the next few months.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under $1 million in assets). The NCUA Board has determined and certifies that the proposed rule will not have a significant economic impact on a substantial number of small credit unions. The reason for this determination is that small credit unions do not have the financial capability and experience to establish a branch in a foreign country. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The proposed regulation contains a voluntary application. As part of that application, a credit union must develop a detailed business plan regarding the establishment of a foreign branch.

The Board estimates that it will take an average of sixteen hours for a credit union to prepare a voluntary application and business plan. The Board also estimates ten credit unions may apply annually for approval under the rule. The cumulative total annual paperwork burden is estimated to be approximately 160 hours.

NCUA will submit the collection of information requirements contained in the regulation to the OMB in accordance with the Paperwork Reduction Act of 1995. 44 U.S.C. 3507. The NCUA will use any comments received to develop its new burden estimates. Comments on the collection of information should be sent to: Office of Management and Budget, Reports Management Branch, New Executive Office Building, Room 10235, Washington, DC 20503; Attention: Joseph F. Lackey, Jr., Desk Officer for NCUA. Please send NCUA a copy of any comments submitted to OMB.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The executive order states that: ''National action limiting the policymaking discretion of the states shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.'' The risk of loss to federally-insured credit unions and the NCUSIF caused by the establishment of foreign branches is a concern of national scope. The proposed rule, if adopted, will help assure that proper safeguards are in place to ensure the safety and soundness of federally-insured credit unions that establish branches in foreign countries.

The proposed rule, if adopted, applies to all federally-insured credit unions. NCUA believes that the protection of those credit unions, and ultimately the NCUSIF, warrants application of the proposed rule to all federally-insured credit unions. The proposed rule does not impose additional costs or burdens on the states or affect the states' ability to discharge traditional state government functions. NCUA has determined that this proposal may have an occasional 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. However, the potential risk to the NCUSIF without the proposed rule justifies this action.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 741

Bank deposit insurance, Credit unions.

By the National Credit Union Administration Board on September 19, 2002.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, the National Credit Union Administration proposes to amend 12 CFR part 741 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), and 1781–1790; Pub. L.101–73.

2. Add § 741.11 to subpart A to read as follows:

§ 741.11 Foreign branching.

(a) *Application and prior NCUA approval required.* Any credit union insured pursuant to Title II of the Act must apply for and receive approval from the regional director before establishing a credit union branch outside the United States unless the foreign branch is located on a United States military institution or embassy outside the United States. The regional director will have 60 days to take action on the request.

(b) *Contents of application.* The application must include a business plan, written approval by the state supervisory agency if the applicant is a state-chartered credit union, and documentation evidencing written permission from the host country to establish the branch that explicitly recognizes NCUA's authority to examine and take any enforcement action, to include conservatorship and liquidation actions.

(c) *Contents of business plan.* The written business plan must address the following:

(1) Analysis of market conditions in the area the branch is to be established;

(2) The credit union's plan for addressing foreign currency risk;

(3) Operating facilities, including office space/equipment and supplies;

(4) Safeguarding of assets, insurance coverage, and records preservation;

(5) Written policies regarding the branch (shares, lending, capital, charge-offs, collections);

(6) The field of membership or portion of the field of membership to be served through the foreign branch and the financial needs of the members to be served and services and products to be provided;

(7) Detailed *pro forma* financial statements for branch operations (balance sheet and income and expense projections) for the first and second year including assumptions;

(8) Internal controls including cash disbursal procedures for shares and loans at the branch;

(9) Accounting procedures used to identify branch activity and performance; and

(10) Foreign income taxation.

(d) *Revocation of approval.* The regional director may revoke approval of

the branch office for failure to follow the business plan in a material respect or for substantive and documented safety and soundness reasons. If the regional director revokes the approval, the credit union will have six months from the date of the revocation letter to terminate the operations of the branch. The credit union can appeal this revocation directly to the NCUA Board within 30 days of the date of the revocation letter.

[FR Doc. 02–24290 Filed 9–25–02; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 58, 70, 71, 72, 75 and 90

RIN 1219–AA48

Air Quality, Chemical Substances, and Respiratory Protection Standards

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

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule that would have amended existing health standards for coal and metal and nonmetal mines to address hazardous substances, permissible exposure limits for certain substances, exposure monitoring, carcinogens, and respiratory protection programs. MSHA developed this proposed rule in 1989, and published a final rule addressing only abrasive blasting and drill dust control, on February 18, 1994. MSHA's decision to withdraw the remaining portions of this proposed rule was the result of changes in agency priorities and the possible adverse effects of unfavorable case law on the proposed rule.

DATES: With the exception of the final rule amendments published on February 18, 1994 (59 FR 8318), the proposed rule published on August 29, 1989 (54 FR 35760), is withdrawn as of September 26, 2002.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2313, Arlington, Virginia 22209–3939, *Nichols-Marvin@msha.gov,* (202)693–9440 (telephone) or (202)693–9441 (facsimile). This document is available in alternative formats, such as large print and electronic format, and can be accessed on MSHA's internet site, *http://www.msha.gov,* at the ''Statutory and Regulatory Information'' link.

SUPPLEMENTARY INFORMATION:

A. Background

On August 29, 1989, MSHA published, at 54 FR 35760, the proposed rule which would have become final in three phases. The rulemaking used a comprehensive, integrated approach that addressed a variety of complex occupational health issues. On October 19, 1989, MSHA extended the comment period to March 2, 1990 (54 FR 43026) and received extensive public comment.

On February 18, 1994, MSHA completed, at 59 FR 8318, the first phase of this proposal as a final rule addressing abrasive blasting and drill dust control. This rule became effective on April 19, 1994.

B. Reasons for Withdrawal

MSHA's decision to withdraw this proposed rule was the result of changes in agency priorities and the possible adverse effect on this proposed rule of the decision in *AFL–CIO et. al.* v. *OSHA,* 965 F.2d (11th Cir. 1992).

It has been more than 13 years since the proposal was published and more than 12 years since the comments were received.

MSHA acknowledges that the TLVs are more than 25 years old. However, at this point, MSHA cannot proceed without reevaluating its approach to the complex issues that this proposed rule addresses and developing alternatives using more current scientific and technical information.

The proposal was structured to resolve a number of potential health hazards. Such a comprehensive approach to rulemaking is no longer a viable means to address such concerns, especially in light of the Eleventh Circuit decision in *AFL–CIO* vacating a similar OSHA standard. The *AFL–CIO* court vacated OSHA's entire air contaminants rulemaking, finding that the agency had not met its statutory burden in establishing the PELs for each of the 428 contaminants regulated by the standard.

For the reasons stated herein, with the exception of provisions published at 59 FR 8318, the proposed rule is withdrawn. This document does not preclude any agency action that MSHA may find to be appropriate in the future.

Dated: September 17, 2002.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 02–24388 Filed 9–25–02; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA98

Improving and Eliminating Regulations, Phase 5, Miscellaneous Technology Improvements (Methane Testing)

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would provide an alternate method of compliance with the requirement for qualified persons to make periodic methane tests at face areas from under permanent roof support, using extendable probes or other acceptable means.

The proposed alternative would apply during roof bolting activities in room and pillar mining operations using continuous mining machines or conventional equipment. It would allow methane tests to be made by sweeping a probe inby the last roof support, provided that a number of requirements for roof support, ventilation and continuous methane monitoring at the roof bolting machine are met to protect the miners. The proposed rule would result in increased mining efficiency and would provide an equivalent level of safety to miners.

DATES: Comments on the proposed rule must be received on or before November 25, 2002.

ADDRESSES: Comments must be clearly identified as such and transmitted electronically to *comments@msha.gov,* by facsimile to (202)693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939, *Nichols-Marvin@msha.gov,* (202) 693–9440 (telephone), (202) 693–9441 (facsimile). This proposed rule is available in alternate formats, such as a large print version, an electronic file or a file on a disk, and is also available on MSHA's internet site, *http://www.msha.gov,* at the ''Statutory and Regulatory Information'' icon.

I. Supplementary Information

A. Background

As part of a comprehensive revision of ventilation standards, MSHA published the existing rule, § 75.362, On-shift Examination, on March 11, 1996 (61 R 9764). This provision requires that methane tests be made at the face from under permanent roof support, using extendable probes or other acceptable means. Section 75.362(d)(1) requires that a qualified person test for methane in each working place at the start of each shift, before electrically powered equipment is energized, taken into a workplace or operated, and at least every 20 minutes while equipment is being operated.

On-shift examinations of working sections have long been accepted as a standard safety practice in coal mining due to the variable nature of mining conditions and the potential for hazards to develop quickly. These examinations ensure that the environment is safe while miners work during the shift by identifying existing or developing hazards, and permitting rapid correction of hazardous conditions before miners are endangered. Methane tests are a key part of the on-shift examination.

Methane is an invisible, odorless, and highly flammable product of coal off-gassing. Ignition of methane by a spark or other source can result in a fire or an explosion. A five percent level of methane in the air is capable of igniting. Frictional methane ignitions in mining can occur when sparks or hot metal fragments from the drill bits on mining equipment or roof bolting machines contact the liberated methane. Methane liberates from the coal at the face, roof, ribs and floor, as well as from pieces of broken coal that have been crushed by the mining machine. Ventilation, as provided by an approved ventilation plan, dilutes and removes the liberated methane.

Over the years, the coal mining industry has expanded its use of a number of mining methods that increase production. One such method is deep cut mining, also called extended cut mining, where a continuous mining machine makes cuts greater than 20 feet into the coal seam. Formerly, when most continuous mining machines were operated by an on-board miner positioned in the cab at the rear of the machine, the cut was limited to the distance between the cutting head and the cab, or about 20 feet, to protect the miner in the cab from hazards associated with unsupported roof. Today, most continuous mining machines are manufactured to operate with remote control devices, which allow the machines to cut well beyond 20 feet into the coal seam while the miner stands under supported roof and in an area of reduced coal dust.

Most of the mining operations today use continuous mining machines that make deep cuts. These longer distances to the face make monitoring and ventilating methane more difficult. The devices used to test for methane often consist of a methane detector attached to either a pole which may be held by the miner or an extension device which the miner slides forward to the face. In mining sections with deep cuts, the longer probe arrangements can telescope 40 feet or more. The comments and testimony from the 1996 rulemaking include suggestions that back injuries could result from holding the longer probes, although some miners testified that the arrangements are practicable without causing injuries. MSHA is not aware of any empirical testing concerning injuries from the use of these probe arrangements, however, we are mindful of the importance of seeking compliance alternatives that will ensure safe working practices.

Generally, a deep cut mining operation begins by directing the ventilation to the face, usually by positioning tubes or curtains. After that, a qualified person makes a methane test, and the continuous mining machine is moved into the area. The continuous mining machine cuts from 20 to 40 feet into the coal seam, or even deeper, if approved by the mining plan. When the cut is finished, the continuous mining machine is backed out, and the ventilation may be adjusted to redirect more air to the next face area.

Following the cut, the roof bolting machine moves into the working place. Virtually every roof bolting machine in operation today is equipped with an automated temporary roof support (ATRS) system. When the ATRS is deployed, the roof is supported by a hydraulically powered mechanism. This configuration provides the protection of temporary roof support for the miners who are positioned at the drill head control to install the roof bolts. After the ATRS is fully deployed, the miner installs a row of four or more roof bolts across the width of the cut, releases the ATRS, and advances the roof bolting machine to the next position. This process is repeated at approximately four-foot intervals, depending on the roof bolting plan and machine design, until the entire roof is supported up to the face.

During this entire process, a qualified person, as defined in § 75.151, makes a methane test at the face before electrically powered equipment is energized, taken into the workplace or operated, and at least at 20 minute intervals during the operation of this equipment.

In 1997 MSHA tested an arrangement for conducting methane tests at the face by magnetically attaching a portable methane detector to the head of the continuous mining machine, which would be trammed forward by remote control to the face for the test. However, similar arrangements for making methane tests from roof bolting machines are not practicable because roof bolting machines do not operate by remote control.

The National Institute for Occupational Safety and Health (NIOSH) conducted a study (''Comparison of Methane Concentrations at a Simulated Coal Mine Face During Bolting'') which examined issues related to methane in working places during roof bolting. In 1999, NIOSH presented the study at the 8th U.S. Mine Ventilation Symposium, sponsored by the Society of Mining Engineers' Underground Ventilation Committee. The testing consisted of gallery simulations using a model roof bolting machine fitted with instrumentation to record methane levels at various locations in the simulated working place under different methane release conditions. A part of this study examined MSHA's 38 accident investigation reports from 1981 to 1994 which involved methane ignitions at roof bolting machines. The ignition source was at the bolting machine in 37 of these accidents, and no ignition source was identified in the remaining accident. The report shows that a combination of continuous monitoring near the drill head together with methane tests inby the roof bolting machine would be effective in identifying methane hazards when the primary source of methane liberation is the drill hole.

During the period 1994 through 2001, MSHA investigated 16 accidents which involved methane ignitions at roof bolting machines. Twelve of these accidents directly involved roof drilling or bolt installation. Consistent with the ignitions studied by NIOSH, the accidents involving roof drilling or bolt installation occurred when a hot drill bit being pulled out of the drill hole ignited a flammable methane-air mixture, or when the miner inadvertently drilled through metal roof straps or encountered harder than normal substance in the mine roof.

In November, 1998, the United Mine Workers of America (UMWA) and the Bituminous Coal Operators Association (BCOA) jointly recommended that

MSHA amend the current rule to allow the option of taking methane tests by sweeping a short probe inby from under supported roof, provided that a number of mandatory precautions are taken, such as providing the roof bolting machine with both an integral ATRS and a continuous methane monitor. The joint recommendation cited the draft NIOSH study, and UMWA and BCOA further stated that the suggested compliance option would promote greater safety. MSHA believes that this optional method for methane testing would provide an equivalent level of safety, and therefore proposes this rule which is largely based on the NIOSH research and the joint recommendation of labor and industry.

This proposed rule is designed to protect the miner and to be easily integrated into the mining cycle. MSHA encourages all parties to fully express their viewpoints during this rulemaking to assist the agency in promulgating a final rule that best addresses the safety of our nation's underground coal miners.

II. Discussion of the Proposed Rule

A. Subparagraph 75.362(d)(2)

This proposed rule would add a new subparagraph after the existing § 75.362(d)(2) to allow an optional method for making methane tests during roof bolting operations. Thus the phrase ''Except as provided in subparagraph 75.362(d)(3)'' would be added to the beginning of § 75.362(d)(2) to clearly show that this option follows.

B. Proposed Subparagraph 75.362(d)(3)

This proposed subparagraph would allow an alternative method of compliance with subparagraph (d)(2) during roof bolting. The required methane tests could be made by using a probe to sweep not less than 16 feet inby the last area of permanently supported roof, provided certain requirements are met, as outlined in proposed subparagraphs 75.362(d)(3)(i) through (vi). MSHA believes that the 16 foot inby minimum provides protection equivalent to the current requirement whether there are four rows of bolts on a four foot pattern or three rows of bolts on a five foot pattern. The probe would go sufficiently beyond the unsupported roof to check for the presence of methane.

Certain difficulties exist in actually making the tests under the current standard. The longer probes required to reach the face of a deep cut can be unwieldy, and therefore difficult to position accurately at the face. Methane tests at the face currently must be made with the detector positioned at least 12 inches from the roof, rib and face.

The NIOSH study determined that:

> Compliance with the methane standard would be easier if there were alternative sampling locations outby the face. Outby sampling locations closer to the bolting operation could also provide better measurements of methane when the primary liberation is the drill hole.

The study further determined that:

> The primary way to assure that methane concentrations are not ignitable is to monitor methane levels near the drill hole. Measurements must also be taken during bolting to determine methane concentrations at the face.

Prior to the 1996 rulemaking, methane tests were taken at the last permanent roof support, unless the approved ventilation plan required tests be made closer to the working face by using extendable probes or other acceptable means. When MSHA published the proposed revisions in 1994, some commenters expressed concerns about possible higher accumulations of methane in the deep cuts, and wanted the methane tests to be performed as close to the working face as practicable without endangering the miner. Based on data from research done by MSHA and the former Bureau of Mines during the prior 25 years, such as Bureau of Mines Report of Investigation 7223, ''Face Ventilation in Underground Bituminous Coal Mines,'' published in 1969, MSHA agreed with these comments. The final rule published in 1996 required that methane tests be made at the face area.

The existing requirement to make all methane tests at the face area was intended to provide adequate testing in extended cuts. However, as stated above, the ignition hazard during roof bolting is not necessarily at the same location as during cutting, that is, the face area. The conditions required for an ignition may be present at the drill head when the miner drills into the roof. Testing for methane at a minimum distance of 16 feet inby the last area of permanently supported roof would provide adequate assurance that methane is not present or accumulating around the roof bolting machine at the time the roof bolter is drilling. The proposed alternative provides at least equivalent protection by supplementing methane tests in by the area where roof bolting takes place with continuous monitoring at the roof bolting machine where methane ignitions have occurred at the time that drilling is occurring. The alternative compliance option provided under § 75.362(d)(3) can only be used if the conditions of subparagraphs § 75.362(d)(3)(i) through (vi) are met, as discussed below.

C. Proposed Subparagraph 75.362(d)(3)(i)

This proposed subparagraph would require the roof bolting machine to be equipped with an integral automated temporary roof support (ATRS) system if the alternative testing method is used, and would further require the ATRS to meet the requirements of § 75.209. Section 75.209 provides technical requirements for ATRS systems, which are installed on virtually all roof bolting machines. The ATRS provides the miner with an additional level of protection during roof bolting operations.

D. Proposed Subparagraph 75.362(d)(3)(ii)

This proposed subparagraph would require the roof bolting machine to have a permanently mounted methane monitor. MSHA believes that a methane monitor on the roof bolting machine is an effective method of testing for methane at a potential principal ignition source during roof bolting operations, and is consistent with the NIOSH study determinations.

The proposed subparagraph would further require that the methane monitor comply with the requirements of §§ 75.342(a)(4), 75.342(b) and 75.342(c). Section 75.342(a)(4) establishes maintenance and calibration requirements for the monitors, requires training for miners who perform the maintenance and calibration, and establishes record keeping and records retention requirements for the calibration tests. While this proposed rule would allow an alternative method for making methane tests, it would also require that the methane monitors on the roof bolting machines be properly maintained at all times, and thus would not allow the use of a methane detector and probe in lieu of a poorly maintained or inoperative monitor on the roof bolting machine.

Section 75.342(b) requires that the methane monitor give a warning signal when the air-methane concentration reaches 1.0 per cent, and that this warning signal be visible to someone who is able to de-energize the machine to which the monitor is mounted. Section 75.342(c) requires that the methane monitor be able to automatically de-energize the machine to which it is mounted when the methane-air mixture reaches 2.0 per cent or when the monitor is not operating properly. The warning signal and automatic de-energization provide

an additional measure of protection to miners.

Although methane monitors can be magnetically mounted to roof bolting machines, this proposed subparagraph would require that they be permanently mounted for reliable operation and assure that the sensor remains in an effective location. MSHA does not anticipate that permanently mounting the sensor on the ATRS would require recertification of the ATRS. However, 30 CFR part 18 requires an electrical field modification, which can be filed either by the mine operator or the ATRS manufacturer. The electrical field modification is required before changes are made to an approved machine to ensure that permissibility of the machine to operate in a gassy atmosphere has not been compromised. The manufacturer can apply for approval of an ATRS system produced with an integral methane monitor.

E. Proposed Subparagraph 75.362(d)(3)(iii)

This subparagraph sets requirements for the position of the methane monitor sensor on the ATRS. First, the sensor must be mounted on the inby end of the ATRS, second, it must be within 18 inches of the longitudinal center of the ATRS, and third, it must be positioned at least 12 inches from the roof when the ATRS is deployed.

MSHA's proposal to require mounting the sensor on the inby side of the ATRS is based on the NIOSH study. In that study, NIOSH found the highest statistical correlation to be between face methane concentration and a point which would be near the downwind end of the ATRS. The proposed requirement to position the methane sensor near the center of the ATRS is intended to protect the methane sensor from damage. Finally, the proposed requirement for the methane sensor to rest at least 12 inches below the roof when the ATRS is deployed reflects the standard practice of measuring methane at least 12 inches from the surface to obtain a result representative of the general environment being measured. MSHA believes this distance achieves a balance between effectiveness and practicality.

The continuous methane monitor mounted to the roof bolting machine, together with the probe used to sweep inby for methane, comprise a two-element system for methane detection. MSHA believes this two element system would be effective in detecting methane in the zone containing the most likely ignition source.

F. Proposed Subparagraph 75.362(d)(3)(iv)

This proposed subparagraph specifies the frequency of manual methane tests, and is consistent with existing § 75.362(d)(1)(iii), which in turn is derived from the statutory provision requiring methane tests to be made at least every 20 minutes while electrically powered equipment is operated (Mine Act, Section 303(h)(1)).

Existing § 362(d)(1), in part, requires a methane test before the roof bolting machine enters or is operated in the working place. Proposed subparagraph (d)(3)(iv) would clarify this provision for roof bolting machines to require a qualified person to make a methane test before the roof bolting machine enters the working place, unless the last test was made within 20 minutes, and would additionally require a methane test at least every 20 minutes during roof bolting operations. In many instances, a methane test is made immediately before the continuous mining machine is withdrawn from a completed cut. Under these circumstances, the methane test essentially remains valid for any equipment that would enter the working place during the 20 minutes following the methane check. Thus, the methane test made before the continuous mining machine is withdrawn also meets the requirement for the methane check before the roof bolting machine enters the working place, provided that 20 minutes have not elapsed since the test was made.

G. Proposed Subparagraph 75.362(d)(3)(v)

Proposed subparagraph 75.362(d)(3)(v) would require that, once a methane test is taken at the face, all subsequent methane tests be made at the face. As the roof bolting machine advances toward the face, the probe used for the methane test will eventually reach the face. A number of rows of roof bolts will then be installed before the roof bolting machine reaches the face area and the cut is completely bolted. Methane testing would be done at the face while these final rows of roof bolts are installed.

H. Proposed Subparagraph 75.362(d)(3)(vi)

Proposed subparagraph 75.362(d)(3)(vi) would allow the district manager to require that the ventilation plan include a minimum air quantity and the position and placement of ventilation controls to be maintained during roof bolting operations. The NIOSH study, as well as MSHA's experience, shows that ventilation is effective and appropriate during roof bolting operations under certain mining conditions. Currently, some mine ventilation plans require minimum air quantities to be maintained at the roof bolting machines. Typically, these mines liberate substantial quantities of methane, or have a history of ignitions or noncompliance with respirable dust standards for bolting machine operators. In evaluating ventilation plans, district managers will continue to assess these factors and others to determine the appropriate plan parameters for air quantities and ventilation control devices.

The NIOSH study was conducted using ventilating air quantities of 4,000 cfm and 7,000 cfm with methane released at various points at a rate of five cubic feet per minute. The study shows that ventilation is effective in removing methane from working areas around roof bolting machines where significant quantities of methane are liberated in the working place and at the face. In these conditions, mine ventilation plans could specify minimum ventilation quantities and the position of the ventilation control devices.

After the NIOSH study was completed, MSHA reviewed the accident reports for all of the 41 reported methane ignitions that occurred at roof bolting machines between 1994 and 1998. The MSHA report, ''Methane Ignitions On Roof Bolters In Underground Coal Mines'' found that all these ignitions occurred in mines that are considered to have the highest methane liberation. Each of these mines liberated over 850,000 cubic feet of methane per day. Section 103(i) of the Mine Act requires MSHA to conduct spot inspections at least every ten working days at mines liberating over 500,000 cubic feet of methane during a 24-hour period, and at least every five working days at mines liberating over one million cubic feet of methane during a 24-hour period.

The MSHA report, as well as MSHA's experience, indicates that most ignitions at roof bolting machines in mines that liberate significant quantities of methane can be avoided by maintaining adequate ventilation during roof bolting. The proposed rule ensures at least an equivalent level of safety as the existing rule, and at the same time provides flexibility by permitting MSHA to set mine-specific requirements through the ventilation plan.

III. Impact Analyses

A. Cost and Benefits: Executive Order 12866

Executive Order 12866 requires that regulatory agencies assess both the cost and the benefits of intended regulations. MSHA has determined that the proposed rule is not an economically significant regulatory action under Executive Order 12866.

MSHA estimates that the proposed rule would generate a net annual cost savings of approximately $6.6 million, and would provide no diminution of safety to miners. In addition, the proposed alternative testing method would provide an additional benefit by adding continuous methane detection at the area where roof bolting occurs. Methane ignitions at the roof bolting site usually occur because sparks or hot metal fragments from the drill bits ignite the liberated methane. The methane monitoring system would warn miners when methane levels reach one per cent and would automatically shut down the roof bolting machine when methane levels reach two per cent.

The proposed rule would allow the required methane tests to be made by sweeping a probe at least 16 feet inby the last permanent roof support. MSHA anticipates that a probe not longer than 20 feet would be sufficient to make this test. The current rule requires a qualified person positioned under permanently supported roof to test for methane at the face by using an extendable probe or other permissible means. Testing in a deep cut can require the probe to extend 40 feet or more to reach the face area. These longer probes often bend and can be difficult to guide. MSHA believes that periodic methane testing with the shorter probe, in conjunction with continuous monitoring of the area near the roof bolting machine, where drilling occurs, would provide a reliable determination of the methane levels at the face and in the inby mine atmosphere where the miners are working.

B. Regulatory Flexibility Certification

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's economic impact on small entities. Under the RFA, MSHA must use the Small Business Administration (SBA) criterion for a small entity in determining a rule's economic impact unless, after consultation with the SBA Office of Advocacy, MSHA establishes an alternative definition for a small mine and publishes that definition in the **Federal Register** for notice and comment. For the mining industry, SBA defines ''small'' as having 500 or fewer workers. MSHA has traditionally considered small mines to be those with fewer than 20 workers. To ensure that the proposed rule conforms with the RFA, MSHA analyzed the economic impact on mines with 500 or fewer workers and also on mines with fewer than 20 workers. MSHA concluded that the proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, the proposed rule does not include any Federal mandate that may result in increased expenditures of more than $100 million incurred by State, local, or tribal governments, or by the private sector.

D. Paperwork Reduction Act of 1995 (PRA)

Proposed section 75.362(d)(3)(ii) would impose paperwork requirements for preparing applications for field modification of the roof bolting machines and for recording monthly calibration of methane monitors.

MSHA's Approval and Certification Center must approve all proposed modifications to permissible equipment (including roof bolting machines). Each machine model at a mine requires a separate application for approval. We estimate that mines employing fewer than 20 workers will submit a total of 67 applications, mines employing 20 to 500 workers will submit a total of 321 applications, and mines employing more than 500 workers will submit a total of seven applications. A mine supervisor earning $54.53 per hour could complete an application in 30 minutes. Using a factor of 0.07 to annualize the cost, we conclude that the total annualized cost to the industry for this requirement is $754.

TABLE I.—PAPERWORK REQUIREMENT FOR FILING APPLICATIONS FOR FIELD MODIFICATION UNDER § 75.362(d)(3)(II)

Mine size	No. of field modification application [a]	Total first year burden hours [b]	Total first year burden costs [c]	Total annualized costs [d]
Small (<20)	67	34	$1,827	$128
Large (20–500)	321	160	8,743	612
Large (>500)	7	4	200	14
Total	395	198	$10,770	$754

[a] Total number of field modification applications comes from Table IV–4 of MSHA's July, 2002 Preliminary Regulatory Economic Analysis (PREA) for this proposed rule.

[b] Total burden hours = (N × T), where N is the total number of field modifications required and T is the number of hours required for a coal mine supervisor to prepare a field modification application (T = 0.5 hours).

[c] Total first year burden costs = ($B \times W_s$), where B is the total burden hours, and W_s is the hourly wage for underground coal mine supervisors (W_s = $54.53).

[d] Total annualized costs = total first year burden costs × 0.07, where 0.07 is the annualization factor.

Table II below summarizes the annual burden hours and costs of compliance with the calibration requirements of § 75.362(d)(3)(ii). MSHA estimates that 67 small mines (fewer than 20 workers) with a total of 67 roof bolting machines, 295 large mines (20 to 500 workers) with a total of 481 roof bolting machines, and three large mines (over 500 workers) with a total of 22 roof bolting machines would need to comply with this requirement. A miner earning $27.56 per hour could record each calibration in one minute. Thus the coal mining industry would incur an estimated 114 annual burden hours and associated costs of $3,412 for recording monthly calibrations of the methane monitors required on the roof bolting machines.

TABLE II.—PAPERWORK REQUIREMENT FOR MAINTAINING CALIBRATION RECORDS UNDER § 75.362 (d)(3)(II)

Mine size	No. of mines affected [a]	No. of roof bolting machines in affected mines [a]	Total annual burden hours [b]	Total annual burden costs [c]
Small (<20)	67	67	13	$369
Large (20–500)	295	481	96	2,651
Large (<500)	3	22	4	121
Total	365	570	114	$3,142

[a] Number of mines affected and number of roof bolting machines in affected mines come from Table IV–2 of MSHA's July, 2002 Preliminary Regulatory Economic Analysis (PREA) for this proposed rule.

[b] Total annual burden hours = ($N \times T \times 12$), where N is the number of roof bolting machines in the affected mines, T is the number of hours required to record the calibration (T = 0.01667 hours, or 1 minute), and 12 is the yearly number of calibrations.

[c] Total annual burden costs = ($B \times W_m$), where B is the total burden hours and W is the hourly wage rate for underground coal miners (W_m = $27.56).

E. Executive Order 12630 Governmental Actions and Interference with Constitutionally Protected Property Rights

This proposed rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. That is, this proposed rule does not involve implementation of any policy with takings implications.

F. Executive Order 13045 Protection of Children From Environmental Health Risks

In accordance with Executive Order 13045, Protection of Children from Environmental Health Risks, MSHA has evaluated the environmental health and safety effects that this proposed rule could have on children. MSHA has determined that the rule will not have an adverse impact on children.

G. Executive Order 12988 Civil Justice Reform

MSHA has reviewed Executive Order 12988, Civil Justice Reform, and determined that the proposed rule will not unduly burden the Federal court system. The rule has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

H. Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

MSHA certifies that this proposed rule will not impose any substantial direct compliance costs on Indian tribal governments.

I. Executive Order 13132 Federalism

MSHA has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and has determined that the proposed rule has no ''federalism implications.'' In other words, the proposed rule does not have any 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.

J. Executive Order 13211 Energy

MSHA has reviewed this proposed rule in accordance with Executive Order 13211 regarding the energy effects of Federal regulations, and has determined that the proposed rule does not have any adverse effects on energy supply, distribution, or use. Therefore, no reasonable alternatives to this action are necessary.

List of Subjects in 30 CFR Part 75

Fire prevention, Mine safety and health, Reporting and recordkeeping requirements, Underground coal mining, Ventilation.

Accordingly, it is proposed to amend Chapter I of Title 30 of the Code of Federal Regulations as follows:

PART 75 MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

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

Authority: 30 U.S.C. 811.

2. Section 75.362 is amended by adding at the beginning of paragraph (d)(2) the phrase ''Except as provided for in paragraph (d)(3) of this section,'' and by adding paragraph (d)(3) to read as follows:

§ 75.362 On-shift examination.

* * * * *

(d) * * *

(3) As an alternative method of compliance with paragraph (d)(2) of this section during roof bolting, methane tests may be made by sweeping an area not less than 16 feet inby the last area of permanently supported roof, using a probe or other acceptable means. This method of testing is conditioned on meeting the following requirements:

(i) The roof bolting machine must be equipped with an integral automated temporary roof support (ATRS) system that meets the requirements of § 75.209.

(ii) The roof bolting machine must have a permanently mounted, MSHA-approved methane monitor which meets the maintenance and calibration requirements of § 75.342(a)(4), the warning signal requirements of § 75.342(b), and the automatic de-energization requirements of § 75.342(c).

(iii) The methane monitor sensor must be mounted on the inby end and within 18 inches of the longitudinal center of the ATRS, and positioned at least 12 inches from the roof when the ATRS is fully deployed.

(iv) The manual methane test must be made immediately before the roof bolting machine enters the working place unless the last test was made within 20 minutes. During roof bolting, methane tests are also required at intervals not exceeding 20 minutes. The test may be made either from under the last permanent roof support or from the roof bolter's work position protected by the deployed ATRS.

(v) Once a methane test is made at the face, all subsequent methane tests in the same area of unsupported roof must also be made at the face, from under permanent roof support, using extendable probes or other acceptable means at intervals not exceeding 20 minutes.

(vi) The district manager may require that the ventilation plan include the minimum air quantity and the position and placement of ventilation controls to be maintained during roof bolting.

* * * * *

Dated: September 20, 2002.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 02–24387 Filed 9–25–02; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA26

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Unregistered Investment Companies

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is proposing to amend the Bank Secrecy Act (''BSA'') regulations to prescribe minimum standards applicable to certain unregistered investment companies, such as hedge funds, commodity pools, and similar investment vehicles, pursuant to the revised provision in the BSA that requires financial institutions to establish anti-money laundering programs.

DATES: Written comments on all aspects of the proposal are welcome and must be received on or before November 25, 2002.

ADDRESSES: Because paper mail in the Washington area may be subject to delay, commenters are encouraged to e-mail comments. Comments should be sent by one method only. Comments (preferably an original and four copies) may be mailed to: FinCEN, PO Box 39, Vienna, Virginia 22183–1618, Attention: NPRM—Section 352 Unregistered Investment Company Regulations. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov*, again with a caption, in the body of the text, ''Attention: NPRM—Section 352 Unregistered Investment Company Regulations.'' Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480; Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927; or Office of Chief Counsel (FinCEN), (703) 905–3590 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107–56) (''USA Patriot Act'' or ''Act''). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the BSA, which are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Section 352(a) of the Act, which became effective on April 24, 2002, amended section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every ''financial institution'' to establish an anti-money laundering program that includes, at a minimum (i) the development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test the program. Section 5318(h)(2) authorizes the Secretary, after consulting with the appropriate Federal functional regulator, to prescribe minimum standards for anti-money laundering programs, and to exempt from the application of those standards any financial institution that is not otherwise subject to BSA regulation.

Under the BSA, the definition of ''financial institution'' includes an ''investment company,''[1] a term that is not defined by the BSA or any rule yet adopted by FinCEN. The Investment Company Act of 1940 (codified at 15 U.S.C. 80a) (''1940 Act'') defines the term, and subjects registered investment companies to a comprehensive scheme of regulation administered by the Securities and Exchange Commission (''SEC'').[2] In April 2002, FinCEN issued an interim final rule requiring investment companies that are ''mutual funds'' (*i.e.*, registered open-end management investment companies as described in the 1940 Act) to develop and implement anti-money laundering programs reasonably designed to prevent them from being used to launder money or finance terrorist activities.[3] By separate interim rule, Treasury temporarily exempted investment companies other than mutual funds from the requirement of section 5318(h)(1) of the BSA that they establish anti-money laundering programs.[4]

In the interim rule on anti-money laundering programs for mutual funds, Treasury observed that there are a number of entities excluded from the 1940 Act definition of ''investment company,''[5] and that those entities in the future would likely be required to establish anti-money laundering programs under section 352 of the Act.[6] Today, FinCEN is proposing a new rule that would define an investment company to include certain investment vehicles not subject to regulation under the 1940 Act, and require these entities to establish anti-money laundering programs in accordance with guidelines included in the rule. These guidelines are substantially the same as those FinCEN has established for mutual funds.

II. Unregistered Investment Companies—General Issues

While Treasury believes it is incumbent upon all United States businesses to be on guard against their use by terrorists or other criminals for money laundering, the BSA imposes

[1] 31 U.S.C. 5312(a)(2)(I).

[2] Section 3(a)(1) of the 1940 Act defines ''investment company'' as any issuer that (A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities; (B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or (C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. 15 U.S.C. 80a–3(a)(1).

[3] FinCEN; Anti-Money Laundering Programs for Mutual Funds 67 FR 21117 (Apr. 29, 2002). Under the rule, the anti-money laundering program must include achieving and monitoring compliance with the applicable requirements of the BSA and Treasury's implementing regulations.

[4] *See* 67 FR 21110 (Apr. 29, 2002).

[5] 67 FR 21117, *supra* note 3. Treasury also observed that, while mutual funds are the predominant type of registered investment company, other types of investment companies are regulated by the SEC, such as closed-end companies and unit investment trusts. A closed-end company typically sells a fixed number of shares in an underwritten offering. Holders of closed-end company shares than trade their shares in secondary market transactions, usually on a securities exchange or in the over-the-counter market. A unit investment trust is a pooled investment entity without a a board of directors or investment adviser, and offers investors redeemable units in an unmanaged, fixed portfolio of securities. Treasury stated its intention to continue to consider the type of anti-money laundering program that would be appropriate for these companies, including the extent to which they pose a money laundering risk that is not more effectively covered by the anti-money laundering program of another financial institution involved in their distribution. *Id.* at 21117–21118. That process is continuing.

[6] *Id.* at n.5. Section 356(c) of the USA Patriot Act requires that the Secretary, the Board of Governors of the Federal Reserve System (''Federal Reserve'') and the SEC jointly submit a report to Congress by October 26, 2002 recommending effective regulations to apply the requirements of the BSA to investment companies as defined in section 3 of the 1940 Act, as well as to persons that would be investment companies but for the exceptions provided in sections 3(c)(1) or 3(c)(7) [15 U.S.C. 80a–3(c)(1), 3(c)(7)].

legal obligations only on certain ''financial institutions'' to develop and implement anti-money laundering programs. The ''financial institutions'' covered by the BSA are listed in section 5312 of that Act, and generally include businesses that deal in cash, securities, or other types of assets that can be readily converted to cash. The term ''unregistered investment company,'' which is a subset of the term ''investment company,'' could include a large range of entities from small investment clubs to large corporate holding companies, and, in between, a vast array of financing vehicles that are unlikely to be used for money laundering purposes. An overly expansive definition of ''unregistered investment company'' would unnecessarily burden businesses not likely to be used to launder money. Moreover, it would bring within the scope of the BSA's anti-money laundering requirements so many entities as to tax resources of the federal regulatory agencies charged with oversight of the financial institutions, diminishing the effectiveness of that oversight. To avoid these results, the Treasury staff has worked closely with staffs of the SEC and the Commodity Futures Trading Commission (''CFTC'') to fashion a definition designed to balance the need for a comprehensive national program to prevent money laundering against the burdens imposed by the BSA on businesses, including small businesses.

Definition of Unregistered Investment Company

The proposed rule would define ''unregistered investment company'' as (i) an issuer that, but for the exclusions provided in sections 3(c)(1)[7] and 3(c)(7)[8] of the 1940 Act, would be an investment company under the 1940 Act,[9] (ii) a commodity pool, and (iii) a company that invests primarily in real estate and/or interests therein. This definition generally would include entities consisting of pools of various asset classes: securities, commodity interests, and real estate. Several types of investment companies that are not registered under the 1940 Act would be covered by this definition, including hedge funds,[10] private equity funds,[11] venture capital funds,[12] commodity pools[13] and real estate investment trusts (REITs),[14] in order to protect against their use for possible money laundering.

As noted above, the proposed rule would apply to commodity pools, which are operated by commodity pool operators (''CPOs'').[15] CPOs that are not exempted under CFTC regulations are registered with, and subject to regulation by, the CFTC and the National Futures Association (''NFA''), the futures industry self-regulatory organization. The USA Patriot Act added CPOs to the BSA definition of ''financial institution.''

FinCEN requests comment whether there are other entities, not covered by other rules requiring anti-money laundering programs, that pool assets and provide a similar opportunity for money laundering or terrorist financing, and whether such entities should be required by the final rule to establish anti-money laundering programs.

Because of the broad scope of the type and nature of businesses that may rely on the exceptions to the 1940 Act, may be commodity pools, or that may invest in real estate, we propose to narrow the

[7] Section 3(c)(1) of the 1940 Act generally excludes from the definition of ''investment company'' any issuer that is not engaged in or proposing to engage in a public offering and whose outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons. 15 U.S.C. 80a–3(c)(1).

[8] Section 3(c)(7) of the 1940 Act excludes from the definition of ''investment company'' an issuer in which all the investors are ''qualified purchasers,'' as defined in the 1940 Act, and that has not engaged in a public offering (as defined in 15 U.S.C. 77d and 17 CFR 230.501–230.508 (Regulation D)). 15 U.S.C. 80a–3(c)(7). The 1940 Act and SEC rules define a ''qualified purchaser'' as a natural person who possesses at least $5 million in investments; a non-natural person that possesses at least $25 million in investments or is owned exclusively by qualified purchasers; and a qualified institutional buyer. *See* 15 U.S.C. 80a–2(a)(51); 17 CFR 270.2a51–1 to 270.2a51–3. As a practical matter, section 3(c)(7) funds also may tend to limit the number of record holders of their securities to less than 500 persons in order to avoid being subject to the public reporting requirements of the Securities Exchange Act of 1934 [15 U.S.C. 78l(g)].

See Report of the President's Working Group on Financial Markets, ''Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management,'' app.B at B–3 (1999) (*www.treas.gov/press/releases/reports/hedgefund.pdf.*) (''Working Group Report'').

[9] The proposed rule therefore would use the definition of ''investment company'' in the 1940 Act as a reference point. *See also* section 356(c) of the Act (requiring Treasury, the Federal Reserve, and the SEC to submit a report to Congress recommending effective regulations to apply BSA requirements to investment companies as defined in section 3 of the 1940 Act, as well as persons that would be investment companies but for certain exceptions from that definition). Treasury anticipates that the CFTC will participate in the development of this report because many persons that will be considered in the report are affiliated with CFTC-registered and regulated entities.

[10] The term ''hedge fund'' refers generally to a privately offered investment vehicle in which the contributions of the participants are pooled and invested in a portfolio of securities, commodity futures contracts, or other assets. In 1999, the President's Working Group on Financial Markets described a hedge fund as: ''any pooled investment vehicle that is privately organized, administered by professional investment managers, and not widely available to the public.'' Working Group Report, *supra* note 8, at 1. Hedge funds are not registered under the 1940 Act because they are offered in a manner that makes them eligible for exceptions to the definition of ''investment company'' in sections 3(c)(1) or 3(c)(7) of the 1940 Act. *See supra* notes 7–8. These funds are generally only offered to persons who qualify as ''accredited investors'' or ''qualified purchasers'' under the federal securities laws. *See* 17 CFR 230.501(a) (definition of ''accredited investor''); 15 U.S.C. 80a–1(a)(51) (definition of ''qualified purchaser''). Hedge funds may be operated by CPOs. Some hedge funds also may be advised by investment advisers registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b] or commodity trading advisors registered under the CEA. *See* 7 U.S.C. 1a(5)–(6). Investors in a hedge fund are typically able to redeem their investments on a quarterly, semi-annual, or annual basis.

[11] Private equity funds are privately offered investment vehicles in which the contributions of institutions and wealthy individuals are pooled and invested in a portfolio of unregistered equity securities (of public or private companies) managed by a professional investment adviser. Private equity funds usually have a limited lifespan of 8 to 12 years, and investors are only able to redeem their investments when the funds liquidate. These funds also do not register under the 1940 Act in reliance on the same exemptions relied on by hedge funds. *See supra* note 11.

[12] Venture capital funds are privately offered investment vehicles in which the contributions of the participants are pooled to invest in start-up companies. The advisers to these funds provide substantial managerial assistance to the start-up companies in which they invest. Venture capital funds typically have a fixed life (usually 10 years). Once the fund has reached its target size, it is closed to further investment so that the fund has a fixed capital pool from which to make its investments. Investors typically are not able to redeem their investments before the fund matures or expires. These funds do not register under the 1940 Act in reliance on the exemptions relied on by hedge funds. *Id*

[13] A ''pool'' is defined in Rule 4.10(d) under the Commodity Exchange Act (''CEA'') as ''any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.'' 17 CFR 4.10(d).

[14] REITs, in general, are investment vehicles in which the contributions of the participants are pooled to invest in real estate, and sometimes in real estate-related securities. In order to yield certain federal tax benefits REITs must satisfy a range of ownership, income, asset, distribution and organizational requirements under the Internal Revenue Code. *See* 26 U.S.C. 856. REITs are organized as business trusts, corporations, or unincorporated associations that are specifically designated as REITs for federal income tax purposes. REITs typically have a lifespan of 10 to 15 years. Interests in REITs may be publicly or privately offered and some are traded on securities exchanges. An investor may request redemption of its interest in some of those REITs that are not publicly traded. Some REITs are not registered under the 1940 Act because they qualify for the exceptions provided by section 3(c)(5)(C) of the 1940 Act or rule 3a–7 thereunder [15 U.S.C. 80a–3(c)(5)(C); 17 CFR 270.3a–7].

[15] A CPO is defined in the CEA to mean ''any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, except that the term does not include such persons not within the intent of the definition of the term as the Commission [CFTC] may specify by rule, regulation, or order.'' 7 U.S.C. 1a(5).

definition of unregistered investment company through three limitations and three exceptions described below.

(i) Limitations

(A) *Redemption Rights.* Under the proposed definition, an ''unregistered investment company'' would include only those companies that give an investor a right to redeem any portion of his or her ownership interest within two years after that interest was purchased.[16] Because these investment vehicles rarely receive from or disburse to investors significant amounts of currency, they are not as likely as other types of financial institutions (*e.g.*, banks) to be used during the initial or ''placement'' stage of the money laundering process.[17] Money laundering is more likely to occur through these entities at the ''layering'' stage of the money laundering process,[18] which generally requires the money launderer to be able to redeem his or her interests in the company. Moreover, companies that offer interests that are not redeemable or that are redeemable only after a lengthy holding or ''lock-up'' period lack the liquidity that makes certain financial institutions attractive to money launderers in the first place.[19] This ''redeemablilty'' requirement is likely to exclude publicly traded REITs, and entities that require lengthy investment periods without the ability to redeem assets, including private REITs, a large number of special purpose financing vehicles, and many private equity and venture capital funds.[20] These types of illiquid companies are not likely to be used by money launderers.

FinCEN requests comment on whether a two-year limit is appropriate, given the purpose of the rule. Should the limitation be for a longer or shorter period? FinCEN assumes that most hedge funds would be required to adopt anti-money laundering programs under the rule because they have only a one-year ''lock-up'' period. Is this assumption correct? Would the limit result in some companies being excluded that may nonetheless be susceptible to use by money launderers? What is the likelihood that hedge funds or other entities will adopt two-year lock-up periods to avoid being subject to the rule?

(B) *Minimum Assets.* The proposed rule would be limited to companies that, as of the most recently completed calendar quarter, have total assets of $1,000,000 or more. This threshold is designed to exclude investment pools such as investment clubs and other small entities that are unlikely to be used for money laundering.[21] FinCEN requests comment on whether this minimum threshold is appropriate.

(C) *Offshore Funds.* Because many of these unregistered investment companies operate ''offshore'' and offer interests in their companies to both U.S. and foreign investors, the proposed rule contains a jurisdictional limitation. The definition of ''unregistered investment company'' includes only an entity that is organized in the United States, sells ownership interests to a ''U.S. person'' (as defined in 17 CFR 230.902(k)),[22] or is organized, operated, or sponsored by a U.S. person. FinCEN believes this jurisdictional nexus is appropriate, and that it is reasonable to require such issuers benefiting from the financial and legal systems of the United States (assuming they meet the other requirements of the rule) to establish anti-money laundering programs to prevent, detect, and facilitate the prosecution of international money laundering and terrorist financing. FinCEN requests comment on whether this jurisdictional limitation is appropriate.

Exceptions

The proposed rule excepts companies that are owned by one family (''family companies'')[23] from the definition of

[16] As a result, a fund would be excepted from the definition only if it precluded an investor from redeeming each and every investment (*i.e.*, imposed a ''lock-up'' period) for two years from the day the investment was made. Most hedge funds have one-year lock-up periods and, thus, would likely be covered by the definition (assuming they meet the other terms of the definition and the other requirements of the proposed rule) and would be required to have anti-money laundering programs under the rule. Furthermore, any unregistered investment company that ''permits an owner to redeem'' (and meets the other requirements of the proposed rule) would be covered, regardless of whether its investors have the opportunity to (or do) sell the fund's securities in secondary market transactions. The existence of an informal or formal secondary market for the fund's securities would not affect the applicability of the definition.

Some unregistered investment companies may offer dividend reinvestment plans. For the purposes of this rule, we would not consider an investor to ''purchase'' an interest in an unregistered investment company if the investor acquires such interest pursuant to a dividend reinvestment plan offered by the company. Cf. Securities Act Release No. 929 (July 29, 1936) (describing conditions under which the issuance of securities pursuant to a dividend reinvestment plan is not a sale for value subject to section 5 of the Securities Act of 1933 [15 U.S.C. 77e]). The two-year lock-up provision does not apply to interests acquired with reinvested dividends. Thus, an unregistered investment company that does not permit redemptions within two years of investment would not become subject to the proposed rule solely because it permits investors to redeem interests acquired through the company's dividend reinvestment plan that have been held for less than two years, so long as such-redemption is not permitted within two years of the investment that produced the reinvested dividends.

[17] There is some risk that money launderers will use unregistered investment companies during the ''placement'' stage of the money laundering process. Suspicious activity observed in the purchase of investment company interests includes the use of money orders and travelers checks in structured amounts to avoid currency reporting by the issuing financial institution. Similarly, a money launderer could pay for the initial purchase of an interest with several wire transfers, each in an amount under $10,000, from different banks or brokerage firms to evade currency reporting.

[18] ''Layering'' involves the distancing of illegal proceeds from their criminal source through the creation of complex layers of financial transactions. Money launderers could, for example, use hedge fund accounts to layer their funds by sending and receiving money and wiring it quickly through several accounts and multiple institutions, or by redeeming an interest in a company originally purchased with illegal proceeds and then reinvesting the proceeds received in another unregistered investment company. Layering could also involve purchasing funds in the name of a fictitious corporation or an entity designed to conceal the true owners.

[19] Unregistered investment companies may also play a role in the integration stage of money laundering, *i.e.*, the stage at which illegal proceeds are assimilated into the legitimate economy or invested into legitimate businesses. For example, layering could occur through multiple transactions in a brokerage account, the proceeds of which eventually are invested in the unregistered investment company.

[20] The ''redeemability'' requirement would exclude all types of entities whose interests are sold only on a secondary market, *e.g.*, a securities exchange. These entities generally do not have an account relationship or otherwise deal directly with investors and therefore are not in a position to monitor for money laundering. With respect to such entities, FinCEN relies upon intermediaries in secondary markets, such as broker-dealers, to monitor for money laundering.

[21] FinCEN believes that entities with less than $1,000,000 in assets pose significantly lower money laundering risks than larger entities because they lack the capacity to absorb significant amounts of illegal proceeds. *See* also Section 312 (a)(4)(b) of the USA Patriot Act (defining ''private banking account'' to include accounts of not less than $1,000,000).

[22] 17 CFR 230.902(k) defines ''U.S. person'' to mean (i) any natural person resident in the United States; (ii) any partnership or corporation organized or incorporated under the laws of the United States; (iii) any estate of which any executor or administrator is a U.S. person; (iv) any trust of which any trustee is a U.S. person; (v) any agency or branch of a foreign entity located in the United States; (vi) any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States; and (vii) any partnership or corporation if (A) organized or incorporated under the laws of any foreign jurisdiction; and (B) formed by a U.S. person principally for the purpose of investing in securities not registered under the [Securities Act of 1933], unless it is organized or incorporated, and owned, by accredited investors, (as defined in § 230.501(a)) who are not natural persons, estates or trusts. The rule also excepts certain accounts and persons from the definition of ''U.S. person.''

[23] *See* section 2(a)(51)(A)(ii) of the 1940 Act [15 U.S.C. 80a–2(a)(51)(A)(ii)] (''any company that owns not less than $5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations,

Continued

unregistered investment company. The rule also excepts employees' securities companies,[24] which are investment companies established by employers for the benefit of employees. The rule further excepts employee benefit plans that are not construed to be pools in CFTC Rule 4.5(a)(4).[25] None of these types of companies is likely to be used for money laundering purposes by third parties given their size, structure and purpose. Finally, the rule would except companies that are also another type of ''financial institution'' under the BSA (such as a broker-dealer) to prevent duplicative application of the BSA anti-money laundering rules to the same financial institution.

FinCEN requests comment on whether these exceptions from the definition are appropriate and whether there are other entities that should be specifically included in or specifically excluded (through additional limitations or exceptions) from the definition of ''unregistered investment company.''

III. The Anti-Money Laundering Program

The proposed rule follows recent regulatory actions concerning the establishment of anti-money laundering programs by financial institutions. The proposed rule sets forth minimum requirements for an anti-money laundering program for unregistered investment companies that implement the standards outlined in BSA section 5318(h)(1). The proposed rule would require that, by 90 days following publication of a final rule, unregistered investment companies develop and implement anti-money laundering programs reasonably designed to prevent them from being used to launder money or finance terrorist activities and achieve and monitor compliance with the applicable requirements of the BSA and Treasury's implementing regulations.

The legislative history of the BSA explains that the requirement to have an anti-money laundering program is not a one-size-fits-all requirement. The general nature of the requirement reflects Congress's intent that each financial institution should have the flexibility to tailor its program to fit its business, taking into account factors such as size, location, activities and risks or vulnerabilities to money laundering. This flexibility is designed to ensure that all firms subject to the statute, from the largest to the smallest firms, have in place policies and procedures that are both effective and appropriate to guard against money laundering.[26] To assure that this requirement receives the highest level of attention throughout these diverse industries, the proposed rule requires that each unregistered investment company's program be approved in writing by the board of directors or trustees, the general partner or, if the foregoing do not exist, senior management.[27] The four required elements of the anti-money laundering program are discussed below.

(1) Establish and Implement Policies, Procedures, and Internal Controls Reasonably Designed To Prevent Unregistered Investment Companies From Being Used To Launder Money or Finance Terrorist Activities, Including But Not Limited to Achieving Compliance With the Applicable Provisions of the BSA and the Implementing Regulations Thereunder

Written policies and procedures, which form the basis of any compliance program, should set forth clearly the details of the program, including the responsibilities of the individuals and departments involved. Because unregistered investment companies operate through a variety of different business models, one generic anti-money laundering program for this industry is not possible; rather, each unregistered investment company must develop a program based upon its own business structure. This provision requires that each unregistered investment company identify its vulnerabilities to money laundering and terrorist financing activity, understand the BSA requirements applicable to it, identify the risk factors relating to these requirements, design the procedures and controls that will be required to reasonably assure compliance with these requirements, and periodically assess the effectiveness of the procedures and controls. Policies, procedures, and internal controls should be reasonably designed to detect activities indicative of money laundering. Transactions that could indicate potential money laundering include the use of questionable checks and unusual wire activity. For example, an investment in an unregistered investment company by check drawn on the account of a third party, or by one or more wire transfers from an account of a third party, in each case unrelated to the investor, could be indicative of attempted money laundering. Other examples of ''red flags'' that may indicate potential illegal activity include investor difficulty in describing the reasons for frequent wire transfers to unfamiliar bank accounts or jurisdictions other than the investor's home country; frequent purchases of interests in unregistered investment companies followed by redemptions, particularly if the resulting proceeds are wired to unrelated third parties or bank accounts in foreign countries; non-economic transfers, such as the purchase of an interest for a large dollar amount followed by redemption with indifference as to penalty amounts charged by the company for engaging in such a transaction; transfers to accounts in countries where drug trafficking is known to occur or other high-risk countries; and the transfer of a monetary instrument or an investment interest from a foreign government to a private person. An unregistered investment company that identifies suspicious activity should take reasonable steps to determine if its suspicions are justified and respond accordingly, including refusing to enter into a transaction that appears designed to further illegal activity.[28]

charitable organizations, or trusts established by or for the benefit of such persons''). The exception for family companies would be available without regard to the amount of assets owned by the company.

[24] *See* section 2(a)(13) of the 1940 Act [15 U.S.C. 80a–2(a)(13)]. An employees' securities company is ''any investment company or similar issuer all of the outstanding securities of which (other than short term paper) are beneficially owned (A) by the employees or persons on retainer of a single employer or of two or more employers each of which is an affiliated company of the other, (B) by former employees of such employer or employers, (C) by members of the immediate family of such employees, persons on retainer, or former employees, (D) by any two or more of the foregoing classes of persons, or (E) by such employer or employers together with any one or more of the foregoing classes of persons.'' *Id.*

[25] 17 CFR 4.5(a)(4).

[26] *See* USA Patriot Act of 2001: Consideration of H.R. 3162 Before the Senate (October 25, 2001) (statement of Sen. Sarbanes), 147 Cong. Rec. S10990–02; Financial Anti-Terrorism Act of 2001: Consideration Under Suspension of Rules of H.R. 3004 Before the House of Representatives (October 17, 2001) (statement of Rep. Kelly) (provisions of the Financial Anti-Terrorism Act of 2001 were incorporated as Title III in the Act), 147 Cong. Rec. H6924–01.

[27] The approval could be given at the company's first regularly scheduled meeting after the program is adopted.

[28] 18 U.S.C. 1956 and 1957 make it a crime for any person, including an individual or company, to engage knowingly in a financial transaction with the proceeds from any of a long list of crimes or ''specified unlawful activity.'' Although the standard of knowledge required is ''actual knowledge,'' actual knowledge includes ''willful blindness.'' Thus, a person could be deemed to have knowledge that proceeds were derived from illegal activity if he or she ignored ''red flags'' that indicated illegality. Unregistered investment companies with offshore operations in or with investors from jurisdictions on lists maintained by the Office of Foreign Asset Control (sanctioned countries), FinCEN (country advisories), or the Financial Action Task Force on Money Laundering (non-cooperative countries and territories) should

Policies, procedures, and internal controls should also be reasonably designed to assure compliance with BSA requirements. The only BSA requirement currently applicable to unregistered investment companies is the obligation to report on Form 8300 the receipt of cash or certain noncash instruments totaling more than $10,000 in one transaction or two or more related transactions.[29]

We also note that unregistered investment companies may become subject to additional BSA requirements, including customer and investor identification and verification under section 326 of the Act and filing suspicious activity reports. If unregistered investment companies become subject to additional requirements, their compliance programs will need to be updated to include appropriate policies, procedures, training, and testing functions.

Unregistered investment companies typically conduct their operations, as do mutual funds, through separate entities such as fund administrators, investment advisers, CPOs, commodity trading advisors, broker-dealers (including prime brokers), and futures commission merchants. Some elements of the compliance program will best be performed by personnel of these separate entities, in which case it is permissible for an unregistered investment company to contractually delegate the implementation and operation of those aspects of its anti-money laundering program to such an entity. Any unregistered investment company that delegates responsibility for aspects of its anti-money laundering program to a third party, however, remains fully responsible for the effectiveness of the program, as well as ensuring that federal examiners are able to obtain information and records relating to the anti-money laundering program and to inspect the third party for purposes of the program. In addition, an unregistered investment company would remain responsible for assuring compliance with this regulation. The unregistered investment company is still responsible for taking reasonable steps to identify the aspects of its operations that may give rise to BSA regulatory requirements or that are vulnerable to money laundering or terrorist financing activity; developing and implementing a program reasonably designed to achieve compliance with such regulatory requirements and to prevent such activity; monitoring the operation of its program; and assessing its effectiveness. For example, it would not be sufficient for an unregistered investment company simply to obtain a certification from its delegate that the company ''has a satisfactory anti-money laundering program.''

Investors in unregistered investment companies may include individuals and institutional investors (such as pension funds and corporations), as well as other registered and unregistered investment companies (*i.e.*, ''funds of hedge funds'').[30] The diversity and complexity of unregistered investment company structures, particularly those with offshore operations, may result in a lack of transparency regarding the entities that invest in the unregistered investment company.[31] An unregistered investment company would need to analyze the money laundering risks posed by any entity that invests in it, by using a risk-based evaluation of relevant factors regarding the investing entity. Those factors include the type of entity, its operator or sponsor, its location, the type of regulation to which that entity or its operator is subject, whether the entity has an anti-money laundering program, and the terms of any such program. Unregistered investment companies should account for any risks posed by any offshore operations and affiliates in developing their policies, procedures, and internal controls.

(2) Provide for Independent Testing for Compliance To Be Conducted by Company Personnel or by a Qualified Outside Party

It is necessary that unregistered investment companies conduct periodic testing of their programs to assure that the programs are functioning as designed. Such testing should be accomplished by personnel knowledgeable about the business' money laundering risks as well as BSA requirements. Such testing may be accomplished by employees of the unregistered investment company, its affiliates, or unaffiliated service providers so long as those same employees are not involved in the operation or oversight of the program. The frequency of such a review would depend upon factors such as the size and complexity of the unregistered investment company's operations and the extent to which its business model may make it more vulnerable to money laundering than other institutions. A written assessment or report should be a part of the review, and any recommendations resulting from such review should, of course, be promptly implemented or submitted to the general partner, board of directors or trustees, or, if the foregoing do not exist at the unregistered investment company, senior management for consideration.

(3) Designate a Person or Persons Responsible for Implementing and Monitoring the Operations and Internal Controls of the Program

The unregistered investment company must charge an individual (or committee) with the responsibility for overseeing the anti-money laundering program. The person (or group of persons) should be competent and knowledgeable regarding BSA requirements and money laundering issues and risks, and empowered with full responsibility and authority to develop and enforce appropriate policies and procedures throughout the company. Whether the compliance officer is dedicated full time to BSA compliance would depend upon the size and complexity of the company. Although in some cases the implementation and operation of the compliance program will be conducted by entities (and their employees) other than the unregistered investment company, the person responsible for the supervision of the overall program should be an unregistered investment company's officer, trustee, general partner, organizer, operator, or sponsor, as appropriate.

(4) Provide Ongoing Training for Appropriate Persons

Employee training is an integral part of any anti-money laundering program. In order to carry out their responsibilities effectively, employees of an unregistered investment company

be particularly sensitive to these requirements. For current versions of these country lists, refer to *http://www.treas.gov/offices/enforcement/ofac/sanctions/index.html, http://www.ustreas.gov/fincen/pub_main.html,* and *http://www1.oecd.org/fatf/NCCT_en.htm*, respectively.

[29] *See* 31 CFR 103.30. If an unregistered investment company includes a registered broker-dealer (as principal underwriter or distributor) or a bank (as transfer agent), then those separately registered and regulated financial institutions would also be subject to additional BSA requirements administered by their Federal functional regulator, such as suspicious activity reporting.

[30] A ''fund of hedge funds,'' for example, is a registered or unregistered investment company that invests in hedge funds. These entities can be attractive to investors who seek access to multiple hedge fund investments by investing in only one investment company. *See* Clow, Robert, ''Fund of Hedge Funds Boost Market Share,'' Financial Times (London), June 3, 2002, p.5.

[31] A substantial portion of unregistered investment companies are domiciled offshore, in jurisdictions that may not regulate their activities. *See* Working Group Report, *supra note 8*, at 41 (noting that a significant number of hedge funds are established in offshore financial centers that are tax havens and may be engaged in illegal tax avoidance and similar unlawful activities).

(and of any affiliated and third-party service providers) must be trained regarding the BSA requirements that are relevant to their functions and the signs of money laundering that could arise in the course of their duties. Such training could be conducted by outside or in-house seminars, and could include computer-based training. The level, frequency, and focus of the training would be determined by the responsibilities of the employees and the extent to which their functions bring them in contact with BSA requirements or possible money laundering activity. Consequently, the training program should provide both a general awareness of overall BSA requirements and money laundering issues, as well as more job-specific guidance regarding the particular employee's role and function in the anti-money laundering program.[32] For those employees whose duties bring them in contact with BSA requirements or possible money laundering activity, the requisite training should occur when the employee assumes those duties. Moreover, these employees should receive periodic updates and refreshers regarding the anti-money laundering program.

(5) Notice Requirement

Unlike many other financial institutions subject to the anti-money laundering regime in the BSA, such as banks, savings associations, and mutual funds, unregistered investment companies are not necessarily registered with or identifiable by Treasury or another Federal functional regulator. Without a methodology for identifying or locating these unregistered entities, there would be virtually no way for Treasury or the appropriate Federal functional regulators to assure, with any degree of certainty, through examination or enforcement, that covered unregistered investment companies are in compliance with the rule. Furthermore, while certain companies, particularly larger hedge funds, REITS, private equity funds and venture capital funds, may be identified through trade associations or other relatively simple search methods, other, smaller, less public or offshore entities could escape scrutiny. For the rule to operate and be enforced effectively there must be a practical means of identifying and locating companies subject to the rule.

The BSA authorizes the Secretary of the Treasury to prescribe (after consultation with the appropriate Federal functional regulator) minimum standards for anti-money laundering programs established under the BSA[33] and to require a class of financial institutions to maintain appropriate procedures ensure compliance with the BSA.[34] Notice of the identity of the members of a regulated class is a key procedure in the effective monitoring and enforcement of compliance with the BSA. Therefore, the proposed rule requires that each unregistered investment company file a short notice (''Notice'') identifying itself and providing some very basic information about the company.

The notice filing requirement is implicitly authorized by the BSA as a ''legitimate, reasonable, and direct adjunct'' to the Secretary's explicit statutory authority to require financial institutions to adopt compliance programs to detect and prevent money laundering in 31 U.S.C. 5318(a)(2), as well as the Secretary's broad powers under the BSA to require reports and records useful to criminal tax and regulatory uses.[35] Because many unregistered investment companies lack a federal functional regulator, without a notice requirement of some kind, Treasury (or its designee) would lack the means to examine for and enforce compliance with the rule. The notice requirement is therefore a direct adjunct to the Secretary's enforcement authority.[36] Indeed, there are a number of agency regulations requiring notice filings and other types of filings that Congress did not explicitly authorize. For example, the Office of the Comptroller of the Currency, under its general authority regulatory authority in 12 U.S.C. 93a, has promulgated regulations governing the issuance of investment securities of national banks that are expressly exempt from certain registration requirements of the federal securities laws.[37] Similarly, the CFTC has issued rules that require CPOs that are exempt from registration to file a notice claiming eligibility for the exemption.[38]

The Notice would be required to include—

- The name, address, e-mail address and telephone number of the unregistered investment company;
- The name, address, e-mail address, telephone number and registration number of any investment adviser, commodity trading advisor, CPO, organizer or sponsor of the unregistered investment company;
- The name, e-mail address and telephone number of the designated anti-money laundering program compliance officer;
- The dollar amount of assets under management held by the unregistered investment company; and
- The number of participants, interest holders or security holders in the unregistered investment company.

Filing Procedures. An unregistered investment company would have to file with FinCEN a Notice described in Appendix C of subpart I of 31 CFR part 103. Completed Notices may be submitted to FinCEN by accessing FinCEN's Internet Web site, *http://www.treas.gov/fincen,* and entering the appropriate information as directed, or by mail to: FinCEN, PO Box 39, Mail Stop 100, Vienna, VA 22183.

Filing Date. An unregistered investment company would have to file a Notice within 90 days after it first becomes subject to the provisions of this rule.

Amendments. An unregistered investment company would have to file an amendment to its Notice not later than 30 days after any change to the information in the Notice other than the amount of assets under management or the number of participants, interest holders or security holders.

Withdrawal. An unregistered investment company would have to withdraw its Notice within 90 days after ceasing to be subject to the provisions of this rule.

Finally, unregistered investment companies would be encouraged to adopt procedures for voluntarily filing Suspicious Activity Reports with FinCEN and for reporting suspected terrorist activities to FinCEN using its Financial Institutions Hotline (1–866–566–3974).

FinCEN requests comment regarding whether the proposed notice requirement is appropriate. Is there any other means by which FinCEN could readily identify all the unregistered investment companies subject to the proposed rule? Should those commodity pools that are identified in the database

[32] Appropriate topics for an anti-money laundering program include, but are not limited to: BSA requirements, a description of money laundering, how money laundering is carried out, what types of activities and transactions should raise concerns, what steps should be followed when suspicions arise, and the Office of Foreign Assets Control and other government agency lists.

[33] *See* 31 U.S.C. 5318(h)(2).

[34] 31 U.S.C. 5318(a)(2).

[35] *See United States* v. *Chesapeake & Ohio Railway Co.,* 426 U.S. 500 (1976); *see also Touche Ross & Co.* v. *SEC,* 609 F. 2d 570, 582 (D.C. Cir. 1979).

[36] *See Outdoor Systems, Inc.* v. *City of Atlanta,* 885 F. Supp. 1572, 1582. (N.D. Ga. 1995).

[37] *See* 12 CFR part 16.

[38] *See* 17 CFR 4.5.

to include ''

of the NFA be exempt from this requirement? [39]

IV. Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The costs associated with the development of anti-money laundering programs are attributable to the mandates of section 352 of the Act. Moreover, because the proposed rule applies only to those unregistered investment companies with assets of $1,000,000 or more and also excludes family companies, employees' securities companies, and certain employee benefit plans that are not construed to be pools, it is unlikely that many small unregulated investment companies will be subject to the rule. In addition, the proposed rule will not impose significant burdens on those small unregistered investment companies covered by the rule because they are already subject to Form 8300 reporting and may build on their existing risk management procedures and prudential business practices to ensure compliance with this rule as well as anti-money laundering risk management. Similarly, the procedures currently in place at mutual funds to comply with existing BSA rules should assist unregistered investment companies in establishing their anti-money laundering programs. Finally, the unregistered investment companies subject to the rule will not be compelled to obtain more sophisticated legal or accounting advice than that already required by such companies to run their businesses.

V. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

VI. Paperwork Reduction Act

The collections of information contained in this proposed rule are being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified. Comments on the collection of information should be received by November 25, 2002.

The collections of information in this proposed rule are in 31 CFR 103.132(b) and (d). The information will be used by federal agencies to verify compliance by unregistered investment companies with the provisions of 31 CFR 103.132. The collections of information are mandatory.

Description of Recordkeepers and Responders: Unregistered investment companies as defined in 31 CFR 103.132(a).

Estimated Number of Recordkeepers: 5,000.

Estimated Average Annual Burden Per Recordkeeper: The estimated average burden associated with the recordkeeping requirement in this proposed rule is 1 hour per recordkeeper.

Estimated Total Annual Recordkeeping Burden: 5,000 hours.

Estimated Number of Respondents: 5,000.

Estimated Average Annual Burden Per Respondent: The estimated average burden associated with the notice requirement in this proposed rule is 30 minutes per respondent.

FinCEN specifically invites comments on the following subjects: (a) Whether the collections of information are necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on unregistered investment companies, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

List of Subjects in 31 CFR Part 103

Banks, Banking, Brokers, Commodities futures, Counter money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5331; title III, secs. 314, 352, Pub. L. 107–56, 115 Stat. 307.

2. In subpart I, add new § 103.132 to read as follows:

§ 103.132 Anti-money laundering programs for unregistered investment companies.

(a) *Definitions.* For purposes of this section and Appendix C to this subpart I—

(1) The terms company, director, issuer, person, security, and value have the same meanings as provided in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2).

(2) The term investment adviser has the same meaning as provided in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)).

(3) The term commodity pool means a pool as defined in 17 CFR 4.10(d).

(4) The term commodity pool operator has the same meaning as provided in section 1(a)(5) of the Commodity Exchange Act (7 U.S.C. 1(a)(5)).

(5) The term commodity trading advisor has the same meaning as provided in section 1(a)(6) of the Commodity Exchange Act (7 U.S.C. 1(a)(6)).

(6)(i) Except as provided in paragraph (a)(6)(ii) of this section, the term unregistered investment company means an issuer that is a company—

(A) That—:

(*1*) Would be an investment company under the Investment Company Act of 1940 (15 U.S.C. 80a) but for the exclusions provided for in sections 3(c)(1) and 3(c)(7) of that Act (17 U.S.C. 80a–3(c)(1) and (7));

(*2*) Is a commodity pool; or

(*3*) Invests primarily in real estate and/or interests therein;

(B) That permits an owner to redeem his or her ownership interest within two years of the purchase of that interest;

(C) That has total assets (including received subscriptions to invest) as of the end of the most recently completed calendar quarter the value of which is $1,000,000 or more; and

(D) That is organized under the law of a State or the United States, is organized, operated or sponsored by a U.S. person, or sells ownership interests to a U.S. person. For purposes of this paragraph (a)(6)(i)(D), the term U.S. Person has the same meaning as provided in 17 CFR 230.902(k)).

[39] CPOs are required to file with the CFTC and NFA a disclosure statement concerning the CPO and each commodity pool operated by that CPO. See 17 CFR 4.21, 4.24, 4.25 and 4.26. The NFA maintains a publicly available database (*www.nfa.futures.org/basic*) with the names, addresses, NFA identification numbers, regulatory history, and other information provided by the CPOs in their disclosure document.

(ii) The term unregistered investment company does not include:

(A) Any person that is otherwise required to have an anti-money laundering program pursuant to this subpart;

(B) A family company described in section 2(a)(51)(A)(ii) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(51)(A)(ii)), but without regard to the amount of assets owned by such company;

(C) An employees' securities company as described in section 2(a)(13) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(13)); and

(D) An employee benefit plan (as that term is defined in 17 CFR 4.5(a)(4)) that is not construed to be a pool.

(b) *Anti-money laundering program required.* Effective [the date that is 90 days after publication of the final rule], each unregistered investment company shall develop and implement a written anti-money laundering program reasonably designed to prevent the company from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*) (BSA), and this part. The anti-money laundering program must be approved in writing by its board of directors or trustees or, if it does not have one, by its general partner, sponsor, organizer, operator, or other person who has a similar function with respect to the company. To the extent any definition incorporated into this rule by reference requires action by the unregistered investment company's board of directors, such action may be performed by any of the aforementioned persons if it has no board of directors. The unregistered investment company shall make its anti-money laundering program available for inspection by the Department of the Treasury or its designee upon request.

(c) *Minimum requirements.* The anti-money laundering program shall at a minimum:

(1) Establish and implement policies, procedures, and internal controls reasonably designed to prevent the investment company from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the BSA and this part;

(2) Provide for independent testing for compliance to be conducted by the investment company's personnel or by a qualified outside party;

(3) Designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program; and

(4) Provide ongoing training for appropriate persons.

(d) *Notice.* Each unregistered investment company must provide information to FinCEN as required by this paragraph (d).

(1) Each unregistered investment company must file with FinCEN a Notice described in Appendix C of this subpart. Completed Notices may be submitted to FinCEN by accessing FinCEN's Internet Web site, *http://www.treas.gov/fincen,* and entering the appropriate information as directed, or by mail to: FinCEN, PO Box 39, Mail Stop 100, Vienna, VA 22183

(2) The Notice required by paragraph (d)(1) of this section must be filed not later than 90 days after the date an unregistered investment company first becomes subject to this section. If an unregistered investment company ceases to be subject to this section, it must so advise FinCEN not later than 90 days after ceasing to be subject to this section.

(3) Each unregistered investment company must include the following information in the Notice required by paragraph (d)(1) of this section:

(i) The name of the unregistered investment company, including all family or complex names, trade names and doing-business-as names;

(ii) The complete street address, telephone number and, if applicable, the e-mail address of the unregistered investment company;

(iii) The name, complete street address, telephone number, and if applicable, the e-mail address and registration number of the investment adviser, commodity trading advisor, commodity pool operator, organizer, and/or sponsor of the unregistered investment company;

(iv) The name, telephone number and, if applicable, e-mail address of the person or persons designated pursuant to paragraph (c)(3) of this section;

(v) The total assets under management held by the unregistered investment company as of the end of the unregistered investment company's most recent fiscal year; and

(vi) The total number of participants, interest holders or security holders in the unregistered investment company.

(4) An unregistered investment company must file a revised Notice with FinCEN if there is a change in any of the information required by paragraph (d)(3)(i), (ii), (iii), or (iv) of this section. The revised Notice must be filed in accordance with paragraph (d)(1) of this section not later than 30 days after the date of any such change.

3. Add appendix C to subpart I of part 103 to read as follows:

Appendix C to Subpart I of Part 103

Unregistered Investment Companies, Notice for Purposes of 31 CFR 103.132(d)

Notice is given, on behalf of (insert all names of unregistered investment company)

_____

that:

(1) The unregistered investment company specified above is an ''unregistered investment company'' as such term is defined in 31 CFR 103.132(a).

(2) The address, e-mail address (if applicable), and telephone number of the unregistered investment company are as follows:

Address: _____

_____

_____

e-mail Address (if applicable): _____

Telephone Number:. _____

(3) The name, address, e-mail address (if applicable), telephone number, and registration number of any investment adviser, commodity trading advisor, commodity pool operator, organizer or sponsor of the unregistered investment company are as follows:

Type of Entity: _____

Name: _____

Address: _____

_____

_____

e-mail Address: _____

Telephone Number:. _____

Registration Number: _____

Type of Entity: _____

Name: _____

Address: _____

_____

_____

e-mail Address: _____

Telephone Number:. _____

Registration Number: _____

Type of Entity: _____

Name: _____

Address: _____

_____

_____

e-mail Address: _____

Telephone Number:. _____

Registration Number: _____

(4) The name, e-mail address (if applicable), and telephone number of the designated anti-money laundering program compliance officer of the unregistered investment company are as follows:

Name: _____

e-mail Address: _____

Telephone Number:. _____

(5) The dollar amount of assets under management held by the unregistered investment company as of the end of its most recent fiscal year is $_____.

(6) The number of participants, interest holders or security holders in the unregistered investment company is _____.

BY: _____

Name

_____

Title

_____

Date

Dated: September 18, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–24145 Filed 9–25–02; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA28

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Insurance Companies

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is issuing this proposed rule to prescribe minimum standards applicable to insurance companies pursuant to the revised provision in the Bank Secrecy Act that requires financial institutions to establish anti-money laundering programs.

DATES: Written comments may be submitted on or before November 25, 2002.

ADDRESSES: Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington, DC, area may be delayed. Comments submitted by electronic mail may be sent to *regcomments@fincen.treas.gov* with the caption in the body of the text, ''ATTN: Section 352—Insurance Company Regulations.'' Comments (preferably an original and four copies) also may be submitted by paper mail to FinCEN, P.O. Box 39, Vienna, VA 22183, ATTN: Section 352—Insurance Company Regulations. Comments should be sent by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel, FinCEN, (703) 905–3590; Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927; or the Office of the Assistant General Counsel for Banking and Finance (Treasury), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which is codified in subchapter II of chapter 53 of title 31, United States Code.[1] These amendments are intended to provide additional tools to prevent, detect, and prosecute international money laundering and the financing of terrorism. Section 352(a) of the Act, which became effective on April 24, 2002, amends section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution to establish an anti-money laundering program that includes, at a minimum, (i) the development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs. Section 352(c) of the Act directs the Secretary to prescribe regulations for anti-money laundering programs that are ''commensurate with the size, location, and activities'' of the financial institutions to which such regulations apply. Section 5318(h)(1) permits the Secretary to exempt from this anti-money laundering program requirement those financial institutions not currently subject to FinCEN's regulations implementing the BSA. Section 5318(a)(6) of the BSA further provides that the Secretary may exempt any financial institution from any BSA requirement. Taken together, these provisions authorize the issuance of anti-money laundering program regulations that may differ with respect to certain kinds of financial institutions, and that may exempt certain financial institutions (and, by extension, certain financial institutions within the same industry) from the requirements of section 5318(h)(1).

Although insurance companies have long been defined as a financial institution under the BSA, 31 U.S.C. 5312(a)(2)(M), FinCEN has not previously defined the term or issued regulations regarding insurance companies. In April 2002, FinCEN deferred the anti-money laundering program requirement contained in 31 U.S.C. 5318(h) that would have applied to the insurance industry. 67 FR 21110 (April 29, 2002). The purpose of the deferral was to provide Treasury time to study the insurance industry and to consider how anti-money laundering controls could best be applied to that industry, taking into account differences in size, location, and services within the industry.

Insurance can generally be described as ''a contract by which one party (the insurer), for a consideration that is usually paid in money, either in a lump sum or at different times during the continuance of the risk, promises to make a certain payment, usually of money, upon the destruction or injury of 'something' in which the other party (the insured) has an interest.''[2] In other words, the purpose of insurance is to transfer risk from the insured to the insurer. Insurance companies act as financial intermediaries by providing a financial risk transfer service that is funded by the payment of insurance premiums that they receive from policyholders.

The insurance industry in the United States can generally be divided into three major sectors based on a company's line of business: (1) Life; (2) property/casualty; and (3) health.[3] Life insurance provides protection against the death of an individual in the form of payment to a beneficiary. Life insurance may also offer ''living benefits'' in the form of a cash surrender value or income payments. Recently, life insurers have developed products that offer a variety of investment components, such as interest indexed universal life (which has interest credits linked to external factors) and variable life (where the amount and duration of benefits are linked to investment experience), and that offer the insured the ability to overpay the premium for a fixed rate of return. Such products are marketed to investors as part of a diversified portfolio, often with tax benefits. Annuities, which are generally considered part of the life insurance sector, are purchased to provide a stipulated income stream over a period of time, and are frequently used for retirement planning purposes. Property insurance indemnifies an insured whose property is stolen, damaged, or destroyed by a covered peril. Casualty

[1] Regulations implementing the BSA appear at 31 CFR Part 103. The authority of the Secretary to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

[2] Lee R. Rus & Thomas F. Segalla, *Couch on Insurance* § 1:6, at 1–11 (3d ed.).

[3] In 2000, the insurance industry in the United States consisted of more than 7000 domestic insurance companies and total gross direct premiums exceeded $956 billion. Net premiums written in both the life and property/casualty sectors grew annually between 1992 and 2000. In 2000, the insurance industry, including insurance companies, agents, brokers, and service personnel, employed approximately 2.3 million people. National Association of Insurance Commissioners, *2000 Insurance Department Resources Report.*

insurance provides coverage primarily for the liability of an individual or organization that results from negligent acts and omissions that cause bodily injury and/or property damage to a third party. Health insurance covers the costs of health care. Many insurance companies, particularly the larger ones, offer more than one kind of insurance product.

An insurance company may offer its products through a number of different distribution channels. Some insurance companies sell their products through direct response marketing in which the insurance company sells a policy directly to the insured. Other companies employ agents, who may either be captive or independent. Captive agents represent only one insurance company; independent agents may represent a variety of insurance carriers. Insurance may also be purchased through other third parties, all of which must be licensed insurance agents, but may describe themselves to customers as financial planners or investment advisors. A limited number of companies offer certain types of policies via the Internet. A customer also may employ a broker (*i.e.*, a salesperson who searches the marketplace for insurance in the interest of the customer rather than the insurer) to obtain insurance.

The insurance industry in the United States has traditionally been subject to state, rather than federal regulation.[4] Matters that are subject to state regulation include the overall organization and capitalization of insurance companies, permissible investments, licensing of insurance companies and insurance agents, and the form and content of policies. In some states, insurance companies are already subject to anti-money laundering statutes, currency reporting requirements, and/or suspicious activity reporting requirements. According to an unpublished survey conducted by the National Association of Insurance Commissioners (NAIC) of state statutes or rules applicable to insurance companies, thirty-eight states have money laundering statutes, twenty-one have currency reporting requirements, and one has a suspicious activity requirement.

II. Money Laundering and Terrorist Financing Risks Associated With Insurance Companies

The Congressional mandate that all financial institutions establish an anti-money laundering program is a key element in the national effort to prevent and detect money laundering and the financing of terrorism. The mandate recognizes that financial institutions other than depository institutions (which have long been subject to BSA requirements) are vulnerable to money laundering.

The application of anti-money laundering measures to non-depository institutions generally, and to insurance companies in particular, also has been emphasized by the international community as a key element in combating money laundering. One of the central recommendations of the Financial Action Task Force (FATF),[5] of which the United States is a member, is that measures designed to prevent and detect money laundering, including the establishment of an anti-money laundering program, ''should apply not only to banks, but also to non-bank financial institutions.'' FATF Forty Recommendations (Recommendation 8). Similarly, in January 2002, the International Association of Insurance Supervisors (IAIS)[6] issued anti-money laundering guidance for insurance supervisors and insurance entities stating that:

> Financial institutions including insurance entities, have become major targets of money laundering operations because of the variety of services and investment vehicles offered that can be used to conceal the source of money. Money laundering poses significant reputational and financial risk to insurance entities, as well as the risk of criminal prosecution if insurance entities become involved in laundering of the proceeds of crime.[7]

FinCEN believes that the most significant money laundering and terrorist financing risks in the insurance industry are found in life insurance and annuity products because such products allow a customer to place large amounts of funds into the financial system and seamlessly transfer such funds to disguise their true origin. Permanent life insurance policies that have a cash surrender value are particularly inviting money laundering vehicles. Such cash value can be redeemed by a money launderer or can be used as a source of further investment of his tainted funds—for example, by taking loans out against such cash value. Term life insurance policies also pose a significant risk of money laundering because they possess elements of stored value and transferability that make them attractive to money launderers.[8] Similarly, annuity contracts also pose a significant money laundering risk because they allow a money launderer to exchange his illicit funds for an immediate or deferred income stream. The elements described above generally do not exist in insurance products offered by property and casualty insurers, much less by title or health insurers, although, to the extent that these sectors develop products with similar investment features, or features of stored value and transferability, the proposed rule includes a functional definition intended to include them within its scope.[9] FinCEN does not believe that money laundering risk should be predicated solely on the existence of an ability to obtain a refund on a purchased financial product. Rather, the focus should be on the ability of a money launderer to use a particular financial product to store and move illicit funds through the financial system. Therefore, the proposed rule captures only those insurance products with investment features, and insurance products possessing the ability to store value and to transfer that value to another person.

The identified instances of money laundering through insurance

[4] *See* the McCarran-Ferguson Act, codified at 15 U.S.C. 1011 *et seq.*

[5] The FATF is an inter-governmental body whose purpose is the development and promotion of policies to combat money laundering. Originally created by the G–7 nations, its membership now includes Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council.

[6] The IAIS is an international association representing insurance regulatory authorities from more than 100 jurisdictions. Established in 1994, the IAIS was formed to promote cooperation among insurance regulators, set international standards for insurance supervision, provide training to members, and coordinate work with regulators in other financial sectors and international financial institutions.

[7] IAIS Anti-Money Laundering Guidance Notes for Insurance Supervisors and Insurance Entities, January 2002, at 4.

[8] For example, a narcotics trafficker based in a foreign jurisdiction can purchase a term policy from a U.S. insurer with one large, up-front premium made up of illicit funds using an elderly or ill front person as the insured, and collect the cleansed proceeds when the insured dies.

[9] Theoretically, a money launderer could purchase property or casualty insurance for a business with tainted funds, and transfer the business to a confederate who could cancel the policy and obtain a refund of the cleansed funds. However, this does not mean that such products possess the elements of stored value and transferability that pose a significant money laundering risk. Underwriting practices generally would prevent the conveyance of a property and casualty insurance policy upon the purchase of a business, except in the case of a change in control of a public company, in which the costs and regulatory disclosures required to change control would appear to far outweigh any potential benefit to a would-be launderer. Moreover, as property and casualty insurers determine premiums by the value of the insured property and the perceived risk, the products they issue are not effective vehicles for laundering predetermined sums.

companies generally have been confined to life insurance products. Such products appear to have been particularly attractive to narcotics money launderers. For example, as a result of a joint investigation into the narcotics trafficking and money laundering activities of Colombian drug cartels, federal law enforcement authorities have discovered that these cartels have been hiding their illicit proceeds by, among other things, purchasing life insurance policies. The money laundering scheme involves the purchase, through several insurance brokers, of life insurance policies with cash surrender values in an offshore jurisdiction. Cartel associates are named as beneficiaries to such policies. The life insurance policies are funded by narcotics proceeds that are forwarded to the insurance companies by third parties from all over the world. Although the cash surrender value of the life insurance policies is often far less than the amount invested because of liquidation penalties, particularly if the policies only have been in existence for a few years, the beneficiaries soon elect to liquidate the policies for their cash surrender value. Alhough the beneficiaries thereby suffer a substantial financial loss, the funds received, in the form of insurance proceeds, are effectively laundered.[10] In another case, the U.S. Customs Service obtained the forfeiture of illicit drug money paid to purchase three term life insurance policies in Austin, Texas. The purchase had been made with a number of structured monetary instruments, followed shortly afterward by an attempted redemption of the policies.[11] Law enforcement also has seen similar attempts to launder funds through the purchase of variable annuity contracts.[12] In addition, some financial institutions have reported to FinCEN suspicious transactions involving the structured purchase of life insurance and annuities, followed by the receipt of checks from life insurance companies, and the wiring of the funds to foreign countries.

The international community also has focused on life insurance policies and those insurance products with investment features as the target of anti-money laundering programs. The interpretative note to Recommendation 8 of the FATF Forty Recommendations, relating to the establishment of anti-money laundering programs, states that ''[t]he FATF [Forty] Recommendations should be applied in particular to life insurance and other investment products offered by insurance companies.'' In addition, the IAIS, in its anti-money laundering guidance to insurance businesses, states that such guidance is ''primarily aimed at life insurance business[es] which [are] the predominant class being used by money launderers.''[13]

FinCEN understands that many insurance products are sold through agents of insurance companies. Because of their direct contact with customers, insurance agents are in a unique position to observe the kind of activity that may be indicative of money laundering. In some cases, suspicious activity detected by agents—such as the lump-sum purchase of a life insurance policy with multiple money orders or the purchase of annuity contracts by customers who express little or no interest in the details of such products, like surrender charges—may not be information that is normally known by the insurance company. This may be especially true when insurance agents sell investment products that do not need to be thoroughly scrutinized by the insurance company for underwriting purposes because they lack a health or death contingency. Thus, the proposed rule requires an insurance company to assess the money laundering and terrorist financing risks posed by its distribution channels and to incorporate policies, procedures, and internal controls integrating its agents and brokers into its anti-money laundering program. Whether an insurance company sells its products directly or through agents, FinCEN believes that it is appropriate to place on the insurance company (which develops the products and bears their risks), the responsibility for obtaining all relevant information necessary to establish and maintain an effective anti-money laundering program.

FinCEN anticipates that the measures currently employed by insurance companies to detect and combat fraud may assist such companies when establishing anti-money laundering policies and procedures. However, insurance companies should note that the risks associated with fraud and money laundering are not identical, and that combating money laundering will necessarily require the establishment of additional measures. An anti-fraud policy is concerned that premium payments clear, not with whether they are made with structured instruments or from suspicious sources. Moreover, although a person who purchases a life insurance policy with a single, lump-sum payment and subsequently redeems the policy for its cash value may not inflict any economic harm on the insurance company, such a person can use this process to cleanse his illicit funds in exchange for paying the requisite penalty or fee.

III. Section-by-Section Analysis

Section 103.137(a) defines the key terms used in the proposed rule. The definition of an insurance company reflects Treasury's determination that an anti-money laundering program requirement should be imposed on those sectors of the insurance industry that pose the most significant risk of money laundering and terrorist financing. The definition of an insurance company therefore includes any person engaged within the United States as a business in: (1) The issuing, underwriting, or reinsuring of a life insurance policy; (2) the issuing, granting, purchasing, or disposing of any annuity contract; or (3) the issuing, underwriting, or reinsuring of any insurance product with investment features similar to those of a life insurance policy or an annuity contract, or which can be used to store value and transfer that value to another person. The sectors of the insurance industry offering life insurance and annuity products are both covered by the definition. The last category incorporates a functional approach, and encompasses any business offering currently, or in the future, any insurance product with an investment feature, and any insurance product possessing both stored value and transferability.[14]

The definition of an insurance company does not include insurance agents or brokers, as FinCEN believes the insurance company is in the best position to design an effective anti-money laundering program for its products, based upon the risk assessment it must perform due to the nature of its business. Agents and brokers would therefore not be required under the rule to independently establish an anti-money laundering program. However, as explained in

[10] *United States* v. *The Contents of Account No. 400941058 At JP Morgan Chase Bank, New York, New York,* Mag. Docket No. 02–1163 (S.D.N.Y. 2002) (Warrant of Seizure).

[11] *In the Matter of Seizure of the Cash Value and Advance Premium Deposit Funds, Case No. 2002–5506–000007.* (W.D. Tex. 2002).

[12] *See* Steven Brostoff, *Variable Product Companies Cautioned to be Vigilant On Money Laundering,* National Underwriter, July 1, 2002, at 40.

[13] IAIS Anti-Money Laundering Guidance Notes for Insurance Supervisors and Insurance Entities, January 2002, at 6.

[14] The definition of an insurance company includes any person engaged ''as a business'' in the issuing, underwriting, or reinsuring of certain insurance products, and therefore does not include charities or other non-profit organizations.

greater detail below, an insurance company would be required to assess the money laundering and terrorist financing risks posed by its distribution channels and to incorporate policies, procedures, and internal controls integrating its agents and brokers into its anti-money laundering program. Comments are specifically invited on whether the above definition is appropriate in light of money laundering risks in the industry. Comments also are specifically invited on whether the final rule also should require insurance agents and brokers, or any subsets of agents or brokers, to establish and maintain an anti-money laundering program.

Section 103.137(b) requires that each insurance company develop and implement an anti-money laundering program reasonably designed to prevent the insurance company from being used to facilitate money laundering or the financing of terrorist activities. The program must be in writing and must be approved by senior management. An insurance company's written program also must be made available to the Department of the Treasury or its designee upon request. The minimum requirements for the anti-money laundering program are set forth in section 103.137(c). Beyond these minimum requirements, however, the proposed rule is intended to give insurance companies the flexibility to design their programs to meet their specific risks.

Section 103.137(c) sets forth the minimum requirements of an insurance company's anti-money laundering program. Section 103.137(c)(1) requires the anti-money laundering program to incorporate policies, procedures, and internal controls based upon the insurance company's assessment of the money laundering and terrorist financing risks associated with its products, customers, distribution channels, and geographic locations. As explained above, an insurance company's assessment of customer-related information, such as methods of payment, is a key component to an effective anti-money laundering program. Thus, an insurance company's anti-money laundering program must ensure that the company obtain all the information necessary to make its anti-money laundering program effective. Such information includes, but is not limited to, relevant customer information collected and maintained by the insurance company's agents and brokers. The specific means to obtain such information is left to the discretion of the insurance company, although Treasury anticipates that the insurance company may need to amend existing agreements with its agents and brokers to ensure that the company receives necessary customer information.

For purposes of making the required risk assessment, an insurance company must consider all relevant information. The following are just some of the many factors that should be considered by an insurance company when making its risk assessment: whether the company permits customers to use cash or cash equivalents to purchase an insurance product, whether the company permits customers to purchase an insurance product with a single premium or lump-sum payment, and whether the company permits customers to take out a loan against the value of an insurance product. Other factors that should be considered include whether the insurance company engages in transactions involving a jurisdiction whose government has been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371, has been designated as non-cooperative with international anti-money laundering principles, or has been designated by the Secretary of the Treasury as warranting special measures due to money laundering concerns.

Policies, procedures, and internal controls also must be reasonably designed to ensure compliance with BSA requirements. The only BSA regulatory requirement currently applicable to insurance companies is the obligation to report on Form 8300 the receipt of cash or certain non-cash instruments totaling more than $10,000 in one transaction or in two or more related transactions. Insurance companies may in the future be required to comply with BSA requirements regarding accountholder identification and verification pursuant to section 326 of the Act, as well as the filing of suspicious activity reports. As insurance companies become subject to additional BSA requirements, their compliance programs will obviously have to be updated to include appropriate policies, procedures, training, and testing functions.

Insurance companies typically conduct their operations through agents and third-party service providers. Some elements of the compliance program will best be performed by personnel of these entities, in which case it is permissible for an insurance company to delegate contractually the implementation and operation of those aspects of its anti-money laundering program to such an entity. Any insurance company that delegates responsibility for aspects of its anti-money laundering program to an agent or a third party, however, remains fully responsible for the effectiveness of the program, as well as ensuring that federal examiners are able to obtain information and records relating to the anti-money laundering program and to inspect the agent or the third party for purposes of the program. In addition, an insurance company remains responsible for the following: assuring compliance with this regulation; taking reasonable steps to identify the aspects of its operations that may give rise to BSA regulatory requirements or that are vulnerable to money laundering or terrorist financing activity; developing and implementing a program reasonably designed to achieve compliance with such regulatory requirements and to prevent such activity; monitoring the operation of its program; and assessing the effectiveness of its program. For example, it would not be sufficient for an insurance company simply to obtain a certification from its delegate that the company ''has a satisfactory anti-money laundering program.''

Section 103.137(c)(2) requires that an insurance company designate a compliance officer to be responsible for administering the anti-money laundering program. An insurance company may designate a single person or committee to be responsible for compliance. The person or persons should be competent and knowledgeable regarding BSA requirements and money laundering issues and risks, and should be empowered with full responsibility and authority to develop and enforce appropriate policies and procedures. The role of the compliance officer is to ensure that (1) the program is being implemented effectively; (2) the program is updated as necessary; and (3) appropriate persons are trained and educated in accordance with section 103.137(c)(3).

Section 103.137(c)(3) requires that an insurance company provide for education and training of appropriate persons. Employee training is an integral part of any anti-money laundering program. In order to carry out their responsibilities effectively, employees of an insurance company (and of any agent or third-party service provider) with responsibility under the program must be trained in the requirements of the rule and money laundering risks generally so that ''red flags'' associated with existing or potential customers can be identified. Such training could be conducted by outside or in-house seminars, and could include computer-based training. The nature, scope, and frequency of the education and training program of the

insurance company will depend upon the functions performed. However, those with obligations under the anti-money laundering program must be sufficiently trained to carry out their responsibilities effectively. Moreover, these employees should receive periodic updates and refreshers regarding the anti-money laundering program.

Section 103.137(c)(4) requires that an insurance company provide for independent testing of the program on a periodic basis to ensure that it complies with the requirements of the rule and that the program functions as designed. An outside consultant or accountant need not perform the test. An employee of the insurance company may perform the independent testing, so long as the tester is not the compliance officer or otherwise involved in administering the program. The frequency of the independent testing will depend upon the insurance company's assessment of the risks posed. Any recommendations resulting from such testing should be implemented promptly or reviewed by senior management.

Section 103.137(d) states that an insurance company that is registered or is required to register with the Securities and Exchange Commission (SEC) shall be deemed to have satisfied the requirements of this section for those activities regulated by the SEC to the extent that the company complies with the anti-money laundering program requirements applicable to such activities that are imposed by the SEC or by a self-regulatory organization (SRO) registered with the SEC. Thus, for example, an insurance company that is required to register as a broker-dealer in securities because it sells variable annuities may satisfy the anti-money laundering program requirements under the proposed rule for that activity by complying with the anti-money laundering program requirements applicable to such activity that are imposed by the SEC or one of its registered SROs. To the extent that the issuance of annuities, or any other activity by an insurance company, is not covered by an SEC or SRO-anti-money laundering program rule, then such activity would be subject to the anti-money laundering program requirements of the proposed rule.

IV. Request for Comments

FinCEN invites comment on all aspects of the proposed regulation, and specifically seeks comment on the following issues:

1. Whether the scope of the definition of an insurance company is appropriate in light of money laundering risks in the industry.

2. Whether the final rule also should require insurance agents (captive, independent, or both), or any subset of agents, to establish and maintain an anti-money laundering program.

3. Whether the final rule also should require insurance brokers, or any subset of insurance brokers, to establish and maintain an anti-money laundering program.

4. Whether the factors that should be considered as part of an insurance company's risk assessment are appropriate.

V. Regulatory Flexibility Act

It is hereby certified, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that the proposed rule is not likely to have a significant economic impact on a substantial number of small entities. The costs associated with the development of anti-money laundering programs are attributable to the mandates of section 352 of the Act. Moreover, most insurance companies are larger businesses. To the extent that some insurance companies may be considered small entities, the proposed rule provides for substantial flexibility in how each insurance company may meet its requirements. This flexibility is designed to account for differences among insurance companies, including size. In this regard, the costs associated with developing and implementing an anti-money laundering program will be commensurate with the size of an insurance company. If an insurance company is small, the burden to comply with the requirements of section 352 should be correspondingly minimal. In addition, all insurance companies, in order to remain viable, have in place policies and procedures to prevent and detect fraud. Such anti-fraud measures should assist insurance companies in developing effective anti-money laundering programs. Lastly, many insurance companies, depending on the state in which they do business, are subject to existing state requirements relating to the prevention and detection of money laundering.

VI. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified. Comments on the collection of information should be received by November 12, 2002. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 103.19 is presented to assist those persons wishing to comment on the information collection.

The collection of information in this proposed rule is in 31 CFR 103.137(b). The information will be used by federal agencies to verify compliance by insurance companies with the provisions of 31 CFR 103.137. The collection of information is mandatory. The likely recordkeepers are mostly life insurance companies.

Description of Recordkeepers: Insurance companies as defined in 31 CFR 103.137(a)(4).

Estimated Number of Recordkeepers: 1,200.

Estimated Average Annual Burden Hours Per Recordkeeper: The estimated average burden associated with the recordkeeping requirement in this proposed rule is 1 hour per recordkeeper.

Estimated Total Annual Recordkeeping Burden: 1,200 hours.

FinCEN specifically invites comments on: (a) Whether the proposed recordkeeping requirement is necessary for the proper performance of the mission of FinCEN, including whether the recordkeeping requirement is necessary for the proper performance of the mission of FinCEN, and whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed recordkeeping requirement; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the recordkeeping requirement, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

VII. Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action for purposes of Executive Order 12866. Accordingly, a

regulatory impact analysis is not required.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Insurance companies, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5332; title III, secs. 312, 314, 352, Pub. L. 107–56, 115 Stat. 307.

2. Subpart I of part 103 is amended by adding new § 103.137 to read as follows:

§ 103.137 Anti-money laundering programs for insurance companies.

(a) *Definitions.* For purposes of this section:

(1) *Annuity contract* means any agreement between the insurer and the insured whereby the insurer promises to pay out a stipulated income or a varying income stream for a period of time.

(2) *Insurance company.* (i) Except as provided in paragraph (a)(2)(ii) of this section, the term ''insurance company'' means any person engaged within the United States as a business in:

(A) The issuing, underwriting, or reinsuring of a life insurance policy;

(B) The issuing, granting, purchasing, or disposing of any annuity contract; or

(C) The issuing, underwriting, or reinsuring of any insurance product with investment features similar to those of a life insurance policy or an annuity contract, or which can be used to store value and transfer that value to another person.

(ii) An insurance company shall not mean an agent or broker of any business described in paragraph (a)(2)(i) of this section.

(3) *Life insurance policy* means an agreement whereby the insurer is obligated to indemnify or to confer a benefit upon the insured or beneficiary to the agreement contingent upon the death of the insured, including any investment component of the policy.

(4) *United States* has the same meaning as provided in § 103.11(nn).

(b) *Anti-money laundering program requirements for insurance companies.* Each insurance company, as defined by paragraph (a)(2) of this section, shall develop and implement a written anti-money laundering program reasonably designed to prevent the insurance company from being used to facilitate money laundering or the financing of terrorist activities. The program must be approved by senior management. An insurance company shall make its anti-money laundering program available to the Department of the Treasury or its designee upon request.

(c) *Minimum requirements.* At a minimum, the program required by paragraph (b) of this section shall:

(1) Incorporate policies, procedures, and internal controls based upon the insurance company's assessment of the money laundering and terrorist financing risks associated with its products, customers, distribution channels, and geographic locations. For purposes of making the risk assessment required by this paragraph (c)(1), an insurance company shall consider all relevant information. Policies, procedures, and internal controls developed and implemented by an insurance company under this section shall include provisions for complying with the requirements of subchapter II of chapter 53 of title 31, United States Code and this part, and must ensure that the insurance company obtains all the information necessary to make its anti-money laundering program effective.

(2) Designate a compliance officer who will be responsible for ensuring that:

(i) The anti-money laundering program is implemented effectively;

(ii) The anti-money laundering program is updated as necessary; and

(iii) Appropriate persons are educated and trained in accordance with paragraph (c)(3) of this section.

(3) Provide for on-going education and training of appropriate persons concerning their responsibilities under the program.

(4) Provide for independent testing to monitor and maintain an adequate program. The scope and frequency of the testing shall be commensurate with the risks posed by the financial services provided by the insurance company. Such testing may be conducted by an officer or employee of the insurance company, so long as the tester is not the person designated in paragraph (c)(2) of this section.

(d) *Anti-money laundering program requirements for insurance companies registered or required to register with the Securities and Exchange Commission.* An insurance company that is registered or is required to register with the Securities and Exchange Commission shall be deemed to have satisfied the requirements of this section for those activities regulated by the Securities and Exchange Commission to the extent that the company complies with the anti-money laundering program requirements applicable to such activities that are imposed by the Securities and Exchange Commission or by a self-regulatory organization registered with the Securities and Exchange Commission.

Dated: September 18, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–24144 Filed 9–25–02; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD14–02–002]

RIN 2115–AA97

Regulated Navigation Areas and Security Zones; Escorted Vessels—Philippine Sea, Guam, Apra Harbor, Guam and Tanapag Harbor, Saipan, Commonwealth Northern Mariana Islands

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish regulated navigation areas (RNAs) and security zones for vessels determined to be in need of a Coast Guard escort by the Captain of the Port (COTP) Guam. The security zones for these escorted vessels will close all waters of Philippine Sea, Guam, Apra Harbor, Guam (including Cabras Island Channel), and Tanapag Harbor, Saipan, Commonwealth Northern Mariana Islands, within a 100-yard radius around an escorted vessel while in the RNA. This action is necessary to protect personnel, vessels, and facilities from sabotage or other subversive acts, accidents, or other events of a similar nature. The RNAs will require vessels within 500 yards of an escorted vessel to travel at minimum safe speed and the security zones will prohibit unauthorized entry within a 100-yard radius of an escorted vessel in these RNAs. This rule is not intended to replace or modify the existing RNAs and zones found in 33 CFR § 165.1401, 33 CFR § 165.1402, and 33 CFR § 165.1404.

DATES: Comments and related materials must reach the Coast Guard on or before November 25, 2002.

ADDRESSES: You may mail comments and material to Commanding Officer, Coast Guard Marine Safety Office Guam, PSC 455 Box 176, FPO AP 96540–1057. Marine Safety Office Guam maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at this location between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Fred Meadows, Coast Guard Marine Safety Office Guam at (671) 339–2001.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include you name and address, identify the docket number for this rulemaking (CGD14–02–001), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

In our final rule, we will include a concise general statement of comments received and identify any changes from the proposed rule based on the comments. If we make the final rule effective in less than thirty (30) days after publication in the **Federal Register**, we will explain our good cause for doing so as required by 5 U.S.C. 553(d)(3).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Guam at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Terrorist incidents within the United States on September 11, 2001 have called for the implementation of measures to protect U.S. seaports and transportation infrastructure. In addition, national security and intelligence officials warn that future terrorist attacks against civilian targets are anticipated and that U.S. seaports are particularly vulnerable. These rules are intended to provide for the safety and security of the public, maritime commerce, and transportation by protecting persons, vessels, and seaport facilities in the waters of Philippine Sea, Guam, Apra Harbor, Guam, and Tanapag Harbor, Saipan, Commonwealth Northern Mariana Islands (CNMI). These rules are intended to enable the COTP Guam to provide effective port security, while minimizing the publics' confusion and ease the administrative burden of implementing separate temporary security zones for each escorted vessel.

Discussion of Proposed Rule

The Coast Guard proposes to establish RNAs and security zones for vessels determined by the COTP to be in need of a Coast Guard escort. The security zones will close all waters of Philippine Sea, Guam, Apra Harbor, Guam (including Cabras Island Channel), and Tanapag Harbor, Saipan (CNMI), within a 100-yard radius around each escorted vessel in transit, at anchor, or while moored in a regulated navigation area. These security zones are necessary to protect personnel, vessels, seaport facilities, and other transportation infrastructure from acts of sabotage or other subversive acts, accidents, or other events of a similar nature. These security zones extend from the surface of the water to the ocean floor. Entry into these zones is prohibited unless authorized by the COTP Guam. Representatives of the COTP will enforce these security zones. The COTP may be assisted by other federal or state agencies. Periodically, by Broadcast Notice to Mariners, the Coast Guard will announce the existence or status of the security zones in this rule. The RNAs will require vessels within 500 yards of an escorted vessel to travel at minimum safe speed and the security zones will prohibit unauthorized entry within a 100-yard radius of an escorted vessel in these RNAs.

Regulatory Evaluation

The proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The U.S. Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the limited duration of the zones. Vessels will also be able to transit the RNAs freely outside of any security zones. In addition, the COTP may allow vessels in the security zones on a case-by-case basis.

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 proposed rule will not have a significant economic impact on a substantial number of small entities. No small business impacts are anticipated due to the small size of the zones and the short duration of the security zones in any one area.

Assistance for Small Entities

Under section 231(a) of the Small Business Regulatory Enforcement Fairness Act of 1968 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Fred Meadows, Coast Guard Marine Safety Office Guam, at (671) 339–2001.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local government and would either preempt State law or impose a substantial direct cost of compliance on them. The Coast Guard

has analyzed this proposed rule under that Order and has 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 proposed rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.1405 to read as follows:

§ 165.1405 Regulated Navigation Areas and Security Zones; Designated Escorted Vessels—Philippine Sea and Apra Harbor, Guam (including Cabras Island Channel), and Tanapag Harbor, Saipan, Commonwealth Northern Mariana Islands (CNMI).(a) Regulated navigation area. The following areas, designated by coordinates referencing World Geodetic Datum (1984), are regulated navigation areas (RNAs).

(1) *Philippine Sea, Guam*—All waters from the surface to the bottom of the Philippine Sea, Guam, encompassed by lines connecting the following points, beginning at 13°27′10″ N, 144°35′05″ E, thence easterly to 13°27′17″ N, 144°37′27″ E, thence south westerly to 13°26′52″ N, 144°37′05″ E, thence westerly to 13°26′37″ N, 144°35′05″ E, thence due north back to point of origin.

(2) *Apra Harbor, Guam*—All waters from surface to bottom of Apra Harbor, Guam, shoreward of the COLREGS Demarcation as described in 33 CFR 80.

(3) *Tanapag Harbor*—The waters from surface to bottom of Tanapag Harbor, Saipan (CNMI), encompassed by lines connecting the following points, beginning at 15°12′10″ N, 145°40′28″ E, thence north easterly to 15°14′08″ N, 145°42′00″ E, thence due east to 15°14′08″ N, 145°44′02″ E, thence south easterly to 15°13′54″ N, 144°44′20″ E, thence south westerly along the shoreline to 15°13′11″ N, 145°43′01″ E, thence southwesterly to 15°12′10″ N, 145°40′28″ E.

(4) *Cabras Island Channel, Guam*—All waters from surface to bottom of Cabras Island Channel, Guam, beginning at point 13°27′34″ N, 144°39′39″ E and extending southeasterly to position 13°27′24″ N, 144°39′59″ E then heading easterly along the shoreline to position 13°27′31″ N, 144°40′22″ E then heading north to position 13°27′37″ N, 144°40′22″ E following the shoreline in a westerly direction back to point of origin.

(b) *Security zones.* A 100-yard radius security zone is established around, and is centered on, each escorted vessel within the regulated navigation areas in paragraph (a) of this section. A security zone is activated when an escorted vessel enters an RNA and remains active until the escorted vessel leaves the RNA. This is a moving security zone when the escorted vessel is in transit and becomes a fixed zone when the escorted vessel is anchored or moored. A security zone will not extend beyond the boundary of the RNA in this section.

(c) *Definitions.* As used in this section:

(1) *Escorted Vessel* means any vessel operating in the RNA deemed by the COTP to be in need of escort protection for security reasons or under other circumstances. A designated representative aboard a Coast Guard cutter or patrol boat will accompany vessels deemed in need of escort protection into the RNA.

(2) *Navigation rules* mean international and inland navigation rules in 33 CFR chapter I, subchapters D and E.

(3) *Vessel* means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, except U.S. Coast Guard or U.S. naval vessels.

(4) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer that has been authorized to act on behalf of the COTP.

(d) *Regulations.* (1) No person or vessel may enter into the security zones under this section unless authorized by

the COTP Guam or a designated representative.

(2) A vessel in the RNA established under paragraph (a) of this section operating within 500 yards of an escorted vessel must proceed at a minimum speed necessary to maintain a safe course, unless required to maintain speed by the navigation rules.

(3) When an escorted vessel in the RNA approaches within 100 yards of a vessel that is moored, or anchored in a designated anchorage area, the stationary vessel must stay moored or anchored while it remains within the escorted vessel's security zone unless it is either ordered by, or given permission from the COTP Guam or a designated representative to do otherwise.

(4) The COTP will inform the public of the existence or status of the security zones around escorted vessels in the RNA periodically by Broadcast Notice to Mariners.

(5) Persons or vessels that must enter a security zone or exceed speed limits established in this section may contact the COTP at command center telephone number (671) 339–6100 or on VHF channel 16 (156.8 Mhz) to request permission.

(6) All persons and vessels within 500 yards of an escorted vessel in the RNA must comply with the orders of the COTP Guam or his designated representatives.

(e) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: September 12, 2002.

G.A. Wiltshire,

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

[FR Doc. 02–24444 Filed 9–25–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–144–1–7574; FRL–7383–6]

Proposed Approval and Promulgation of Implementation Plans; Texas; Environmental Speed Limit Revision; and Voluntary Mobile Emission Reduction Program Commitment for the Houston/Galveston (HG) Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve revisions to the Texas State Implementation Plan (SIP). This proposal covers two separate actions.We are proposing approval, through parallel processing, of: a revision to the SIP that would retain the 55 miles per hour (mph) speed limit for vehicles weighing greater than or equal to 10,000 pounds gross vehicle weight rating and would postpone implementation of speed limit reductions for vehicles weighing less than 10,000 pounds until May 01, 2005 (Dual Speed Limit Option). In the alternative, we are requesting comment on a revision to the SIP which would suspend the 55 mph speed limit for all vehicles until May 1, 2005 and in the interim implement an increase in the current environmental speed limit (ESL) of 55 mph to a 5 mph reduction from the speed limits posted before May 1, 2002. Both of these options would be applicable in the counties of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller; and clarification of a State enforceable commitment to remedy any shortfalls in the emission reductions attributed to the Voluntary Mobile Emission Reduction Program (VMEP) in the Houston/Galveston (HG) nonattainment area so as to achieve all necessary reductions by the attainment date.

These new rules are consistent with attainment of the National Ambient Air Quality Standard (NAAQS) for ozone in the HG area. The EPA is proposing approval of these revisions to the Texas SIP to regulate emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC) in accordance with the requirements of the Federal Clean Air Act (the Act).

DATES: Written comments must be received on or before October 28, 2002.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

FOR FURTHER INFORMATION CONTACT: Peggy Wade, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7247, e-mail address: *Wade.Peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refers to EPA. This document concerns control of Air Pollution of NO_X and VOCs from mobile sources in the HG area for attainment demonstration purposes.

What Action Are We Taking Today?

On July 16, 2002, the Chairman of the Texas Commission on Environmental Quality (TCEQ) submitted to EPA for parallel processing two proposed rule revisions to the SIP. These rule revisions concern the delayed implementation of the 55 mph speed limit for vehicles weighing less than 10,000 pounds; and, clarification of a rule to commit the state to remedy any shortfalls in the emission reductions attributed to the VMEP so as to achieve all necessary reductions by the attainment date.

On September 16, 2002, the Executive Director of the TCEQ submitted to EPA an additional option to the environmental speed limit which is under consideration by the TCEQ, in response to comments received on the Dual Speed Limit option. This proposed option would suspend the 55 mph speed limit for all vehicles until May 1, 2005, and, in the interim, would increase the current environmental speed limit of 55 mph to 5 mph below the original posted speed limit. EPA is taking comment on this option.

These revisions are consistent with attainment of the ozone standard in the HG area. The EPA is proposing to approve these revisions to the Texas SIP to regulate emissions of NO_X and VOCs in accordance with the requirements of the Federal Clean Air Act (the Act). For more information on the SIP revision, please refer to the State's June 26, 2002 proposed SIP revision and the September 16, 2002 supplemental information.

These revisions to the HG SIP that we are proposing approval of today are being parallel processed. Parallel processing means that EPA proposes action on a portion of the state revision before the revision becomes final under state law. Under parallel processing, EPA takes final action on its proposal if the final, adopted state submission is substantially unchanged from the submission on which the proposed rulemaking was based, or if significant changes in the final submission are anticipated and adequately described in EPA's proposed rulemaking or result from corrections determined by the State to be necessary through review of issues described in EPA's proposed rulemaking. As described above, the Executive Director of TCEQ is

considering a second option of speed limit implementation in the HG area. We are taking comment on this option.

EPA is proposing action on only these two aspects (modification of the 55 mph speed limit and clarification of the State's enforceable commitment to remedy shortfalls in emission reductions attributable to VMEP) of the submitted SIP revision. A separate notice will be published in the **Federal Register** at a later date to address other components of the June 26, 2002 proposed SIP revision.

Why Are We Proposing a Revision to the June 26, 2002, Texas SIP for the Postponement of the 55 mph Speed Limit for Vehicles Weighing Less Than 10,000 Pounds?

The purpose of this revision is to delay the implementation of the speed limit reduction to 55 mph for light vehicles to May 01, 2005. The December 2000 SIP revision included a speed limit reduction for the 8-county Houston/Galveston nonattainment area. This revision reduced the speed limit to 55 mph on all roadways with posted speeds above 55 mph, with compliance to be achieved by May 01, 2002. Emission reductions attributed to reduced speed limits were initially estimated to be 12.33 tons per day (tpd) of NO_X and 1.76 tpd of VOCs in 2007. (The HG SIP 2007 attainment demonstration budget for on-road mobile source NO_X emissions is 156.6 tpd.) These calculations were performed by the Texas Transportation Institute (TTI) using MOBILE5a, an emissions factor model developed by EPA.

On January 29, 2002, EPA released a new version of the MOBILE model, MOBILE6, representing current best understanding of mobile source emissions estimates. In a preliminary analysis conducted by the Texas Transportation Institute using MOBILE6, results indicate that the majority of emission reductions achieved through the speed limit reduction can be attributed to heavy-duty trucks. New data from MOBILE6 show a decrease in the 2007 ESL NO_X emission reductions from 12.33 tpd (as determined with MOBILE5a) to 5.8 tpd. Additionally, 4.2 of the 5.8 tpd is attributed to heavy-duty vehicles weighing over 10,000 pounds. Passenger vehicles and light-duty trucks contribute only 1.6 tpd in NO_X emission reductions when modeled at 55 mph with MOBILE6. Based on this new information, the TCEQ is proposing to retain the 55 mph speed limit for vehicles weighing greater than or equal to 10,000 pounds gross vehicle weight rating and to postpone speed limit reductions for vehicles less than 10,000 pounds until May 01, 2005.

Because this SIP revision is a delay in implementation only, EPA concludes that the same amount of emission reductions would be achieved by the attainment date and thus, the attainment plan would be unaffected by this change. Prior to May 01, 2005, the TCEQ will conduct a more thorough review of the emissions benefits of speed limit reductions for passenger and light-duty trucks. If the TCEQ determines that such a speed limit reduction strategy is not needed to demonstrate attainment, the Commission may revise the SIP to remove the speed limit reduction altogether. However, if the TCEQ determines that more emission reductions are necessary despite this speed limit reduction strategy, the Commission will need to revise the SIP in order to provide additional control measures. Should a SIP revision be submitted incorporating the removal or modification of the speed limit reduction strategy, EPA may publish a revision to this rule.

Texas acknowledges that the emission reductions attributed to the speed limit reduction are lower as preliminarily calculated with MOBILE6 than they were as calculated with MOBILE5a. Texas intends to do a complete new analysis of all emissions with MOBILE6 during midcourse review. At that time, Texas will determine whether the emission reductions from all controls continue to provide the emission reductions necessary for attainment as established in the attainment demonstration. Should overall emission reductions as calculated with the MOBILE6 model not prove sufficient, Texas will develop additional controls as necessary to ensure sufficient reductions are available to support the attainment demonstration.

The affected area would include the following counties within the HG nonattainment area: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller. This control strategy is a necessary measure to consider for contributing to a successful attainment demonstration with the NAAQS for ozone.

Why Are We Considering the Alternative Speed Limit Proposal to the Texas SIP, Which Suspends the 55 mph Speed Limit Until May 1, 2005 and Reinstates the Speed Limit to a Level 5 mph Below the Previously Posted Speed Limits?

As discussed previously, TCEQ has received comments on their proposed Dual Speed Limit strategy. In response to these comments, EPA is taking comment on whether a second option, if adopted by TCEQ, could be approved. Under this option, the TCEQ would suspend the 55 mph speed limit until May 1, 2005. In the interim, the 55 mph speed limit would be increased to a level 5 mph below the previously posted speed limits.

Emission reductions can be achieved by implementing a 5 mph speed limit reduction from the previously posted speeds of 70 and 65 mph, applicable to all roadways in the 8-county area. Upon EPA approval of this proposal, speed limits on roadways having a previously posted speed limit of 70 mph will be increased from the current environmental speed limit of 55 mph to 65 mph. Speed limits on roadways with previously posted speeds of 65 mph will be increased from the current environmental limit of 55 mph to 60 mph. According to an analysis performed by the Texas Department of Transportation using EPA's MOBILE6 emissions modeling program, this speed limit will result in NO_X emission reductions of 2.3 tpd when compared to the NO_X emissions estimated with MOBILE6 from the previously posted higher speed limits.

Prior to May 01, 2005, the date upon which the suspension of the 55 mph speed limit terminates, the TCEQ will conduct a more thorough review of the emissions benefits of this incremental speed limit reduction. If the TCEQ determines that such a speed limit reduction strategy is not needed to demonstrate attainment, the Commission may revise the SIP to remove the incremental speed limit reduction altogether. However, if the TCEQ determines that more emission reductions are necessary despite this speed limit reduction strategy, the Commission will need to revise the SIP in order to provide additional control measures. Should a SIP revision be submitted incorporating the removal or modification of the speed limit reduction strategy, EPA may publish a revision to this rule. EPA requests comment on whether this state proposed alternative speed limit reduction would be appropriate.

The affected area would include the following counties within the HG nonattainment area: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller. This control strategy is a necessary measure to consider for contributing to a successful attainment demonstration with the NAAQS for ozone.

Why Are We Proposing To Clarify the State's Enforceable Commitment To Remedy Shortfalls in Emission Reductions Attributable to VMEP in the June 26, 2002, Texas SIP Revision?

Voluntary Mobile Emission Reduction Programs (VMEP) are mobile source strategies which attempt to complement existing programs through voluntary, non-regulatory changes in local transportation activities. Some examples include economic and market-based incentive programs, trip reduction programs, ozone action programs and targeted public outreach efforts. Programs of this type attempt to gain additional emission reductions beyond mandatory Clean Air Act requirements and state rules by engaging the public to make changes in activities that will result in reducing mobile source emissions.

A criterion for approval of VMEPs into SIPs is that the voluntary measure be enforceable. Under this policy, the State is obligated to monitor, assess and report on the implementation of voluntary actions and the resultant emission reductions from those actions. In addition, the State must remedy, in a timely manner, any emission reduction shortfalls should the voluntary measure not achieve the projected emission reduction.

The purpose of this revision is to clarify the State's commitment to remedy any shortfalls in the emission reduction attributed to the VMEP so as to achieve all necessary reductions by the attainment date. The state can remedy such a shortfall by revising the voluntary program such that needed reductions will in fact be achieved, adopting substitute control measures, or demonstrating that attainment can be reached without those emission reductions. This proposed language in no way changes existing language in Section 6.3.8 of the December 2000 HG Attainment Demonstration SIP. This rule represents additional, clarifying language to be added to the SIP. Our review indicates that this additional language does not change or weaken the commitment, but merely adds clarity. EPA has reviewed the state's submittal and believes that it is not entirely clear on the timeframe in which the state would remedy any emission reductions shortfall. EPA has commented to the state that the commitment should be further clarified to explicitly express that the state will remedy any emission reduction shortfall by the attainment date. EPA proposes to approve the state's clarification of its commitment provided that the state further clarifies the commitment consistent with EPA's comment to explicitly state that any shortfall will be remedied by the attainment date.

The affected area would include the following counties within the HG nonattainment area: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller. This control strategy is a necessary measure to consider for contributing to a successful attainment demonstration with the NAAQS for ozone.

Proposed Action

We are proposing approval of two revisions: (1) delayed implementation of the 55 mph speed limit for vehicles weighing less than 10,000 pounds until May 1, 2005, or, in the alternative, EPA request's comment on suspension of the implementation of the 55 mph speed limit until May 1, 2005 and increasing the speed limit to a level 5 mph below the previously posted speed limits in the interim; and (2), clarification of a State commitment to remedy any shortfalls in the emission reductions attributed to the VMEP for the HG Ozone Nonattainment Area so as to achieve all necessary reductions by the attainment date.

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

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

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

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Motor vehicle pollution, Volatile organic compounds, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: September 18, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–24492 Filed 9–25–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 67, No. 187

Thursday, September 26, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412–.

Form No.: N/A.

Title: PVO Classification Form.

Type of Review: New.

Purpose: The U.S. Agency for International Development (USAID) requires all private voluntary organizations (PVOs) that wish to be eligible to compete for most forms of foreign economic assistance administered by USAID to register with the Agency. Registration provides a resource for USAID officials to access financial and program information on PVOs. The PVO Registry is a central clearinghouse for information on PVOs working in countries where elsewhere the U.S. Government would not have knowledge of the activities.

To confirm the data is collected in a formalized and consistent manner, USAID has developed the Classification Form's list of sectors and countries that will show where qualified and interested PVOs registered with USAID are working.

Annual Reporting Burden:

Respondents: 450.

Total annual responses: 450.

Total annual hours requested: 150 hours.

Dated: September 19, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–24429 Filed 9–25–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Funds Availability (NOFA) Inviting Applications for the Horse Breeder Loan Program; Correction

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; correction.

SUMMARY: This document contains a correction to the Notice of Funds Availability (NOFA) published Friday July 5, 2002, for the Horse Breeder Loan Program. The loss calculation formula in the NOFA incorrectly calculated losses other than foal losses by inadvertently penalizing horse breeders who generated income form foal loss. This document corrects the formula used to calculate the value of losses, other than foal losses, for the horse breeder business.

FOR FURTHER INFORMATION CONTACT: Cathy Quayle, Senior Loan Officer or Patrick Spalding, Senior Loan Officer, USDA/FSA/DAFLP/STOP 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522; telephone (202) 720–1472; facsimile (202) 720–6797; electronic mail: *Cathy_Quayle@wdc.usda.gov* or *Patrick_Spalding@wdc.usda.gov.*

Correction

Accordingly, in the NOFA published on July 5, 2002 (67 FR 44799—44804) make the following correction:

On page 44802, in the first column, in section XI, correct the first sentence of paragraph 3(b) to read as follows:

XI. Loss Calculations

* * * * *

3. * * *

(b) The annual net income for the horse breeder business will be determined by subtracting all cash business expenses for the horse breeder business from all business income for the horse breeder business reported on Schedule F and other related schedules of the applicant's Federal income tax return. * * *

* * * * *

Signed at Washington, DC, on September 12, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–24428 Filed 9–25–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Apache-Sitgreaves and Tonto National Forests Rodeo/Chediski Fire Salvage and Rehabilitation Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Apache-Sitgreaves and Tonto National Forests of the Southwestern Region of the Forest Service are planning to prepare an environmental impact statement (EIS) on a proposal to salvage fire-killed timber on National Forest System lands within the Rodeo/Chediski Fire on June 2002. The EIS is intended to foster informed decision-making and public participation of a site-specific proposal to improve or maintain post-fire ecological functions of the land.

DATES: Comments concerning the scope of the analysis must be received by November 15, 2002. The draft environmental impact statement is

expected February 15, 2003 and the final environmental impact statement is expected July 1, 2003.

ADDRESSES: Send written comments to the Rodeo/Chediski Salvage and Rehabilitation Project, Attn: Merle Glenn, Public Affairs Specialist, P.O. Box 569, Overgaard, AZ 85933. For further information, mail correspondence to the same address as listed above.

FOR FURTHER INFORMATION CONTACT: Jimmy E. Hibbetts, ID Team Leader, for the Rodeo/Chediski Salvage and Rehabilitation Project at (928) 535–5979.

SUPPLEMENTARY INFORMATION: The Rodeo/Chediski Fire burned over 460,000 acres of forested lands, including over 176,000 acres of Apache-Sitgreaves and Tonto National Forest System lands. Over 470 structures were destroyed in the fire, which threatened 30 communities and subdivisions. Over 225 miles of heavily traveled system roads and 107 miles of trails received damage. This fire killed millions of trees with an estimated volume of over 300 million board feet of commercial timber, which represent serious short and long-term hazards to users of the two national forests, adjacent local communities and subdivisions, and remaining forest resources. Hazards from burned trees include falling dead trees and potential fuel loadings. Another hazard associated with burn areas relates to flash flooding, which has a great potential to affect public health and safety. Treatments are being considered to meet public health and safety concerns with considerations for other resources.

Area watersheds with denuded slopes are susceptible to erosion and can lead to reduced soil productivity, loss of vegetation regeneration potential and increased downstream flooding and sedimentation. All watersheds are being analyzed within the burn area for potential damages to downstream resources. Both Black Canyon Lake and Canyon Creek have been heavily impacted by sedimentation and debris resulting from the fire. Utilizing dead trees and slash from treatment activities is being considered to improve watershed conditions by creating protective ground cover and providing ground shade to re-establish vegetation.

Purpose and Need for Action: Due to the intensity, magnitude and size of the fire, there is a tremendous amount of standing dead and dying trees within the burn. Portions of the burned area now pose a potential risk to forest users, communities, private property and remaining resources. These risks include the hazards of falling trees, erosion and flooding, future wildfires occurring in the wildland/urban interface, impacts to wildlife and fish and their habitats, and insect infestation to remaining live trees. Urgent action is needed to recover fire-killed timber while it still has economic value. If completed within 18 months after the burn, the substantial cost of removing these trees can be offset by the commercial sale of wood products.

Proposed Action: Salvage dead trees while maintaining or improving watershed conditions with considerations for wildlife and fisheries. Burn severity, slope and specific resource needs will determine actual treatments. Forest Plan standards will be adhered to for all resources and activities. Treatments will also consider lowering visual impacts along Highway 260 and to private lands. On existing system roads, repair, reconstruct, realign, resurface and construct additional turnouts where needed. There will be no new permanent road construction. Close and obliterate unneeded roads once salvage operations have been completed.

Possible Alternatives: Preliminary alternatives may include continuation of present situation (no action alternative) and alternatives to meet the purpose and need of the proposed action.

Responsible Officials: The Forest Supervisors for the Apache-Sitgreaves and Tonto National Forests are jointly responsible for deciding whether or not to salvage dead trees resulting from the Rodeo/Chediski Fire. They are: John C. Bedell, Forest Supervisor, Apache-Sitgreaves National Forest, P.O. Box 640, Springerville, AZ 85938–0640 and Karl P. Siderits, Forest Supervisor, Tonto National Forest, 2324 E. McDowell Road, Phoenix, AZ 85006.

Nature of Decision To Be Made: The Forest Supervisors are jointly responsible for deciding whether or not to salvage dead trees and if so, where and to what extent it will occur; how to stabilize watersheds and what treatments will be used; what repairs or treatments of existing system roads would occur; and which roads will be closed and obliterated, if any. They will also determine what treatments, if any, will be implemented to mitigate further damages to threatened and sensitive species habitats and to fisheries. The Supervisors may decide to select the proposed action, take no action or select another alternative to the proposed action.

Scoping Process: A detailed scoping and public involvement plan has been developed. An interdisciplinary team has been selected and began work August 5, 2002 to do the environmental analysis, prepare and accomplish scoping, and public involvement activities. Comments on the nature and timing of scoping and public participation activities would be beneficial to the team in updating the scoping plan. Additional public notice will be given of specific planned activities when the scoping and public involvement plan is completed.

On August 26, 2002, scoping letters were sent to over 325 organizations, Tribes, agencies and individuals. Responses ranged from total support to total opposition of the proposed action. It was determined that additional scoping was needed and an EIS be prepared.

Comment Requested: This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Comments are specifically requested for the proposed action and any alternatives to the proposed action that should be considered. Comments on the proposal are most useful if they pertain directly to the project area and are as site specific as possible. Comments citing scientific reports or literature should address how that research specifically applies to this project.

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 Agency publishes the notice 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 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, 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 on 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.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: September 19, 2002.

John C. Bedell,

Forest Supervisor, Apache-Sitgreaves National Forest.

Dated: September 20, 2002.

Thomas J. Klabunde,

Acting Forest Supervisor, Tonto National Forest.

[FR Doc. 02–24480 Filed 9–25–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for Missionary Ridge Burned Area Timber Salvage and Public Scoping; San Juan National Forest, CO

AGENCY: Forest Service, USDA/

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and conduct public scoping; San Juan National Forest, Colorado.

SUMMARY: In accordance with the National Environmental Policy Act, notice is hereby given that the U.S. Forest Service (USFS), is initiating the preparation of an Environmental Impact Statement (EIS) with associated public scoping, on the proposed salvage of fire killed timber from the Missionary Ridge burn area. The EIS analysis area (70,000 acres) encompasses national forest land within the area generally described as the Missionary Ridge burn area. This area of national forest burned during June and July 2002. The burn area is located north of Durango, CO and is bounded on the west side by State Highway 550 and encompasses lands located on Missionary Ridge, and further to the east, lands surrounding Lemon and Vallicito Reservoirs. The proposed action is to salvage some of the timber burned by the Missionary Ridge Fire. The EIS will address environmental impacts and mitigation measures associated with harvesting and removal of dead timber from various units within the burn area.

DATES: Written comments will be accepted until October 25, 2002. Two public scoping meetings will be held, one beginning at 4 p.m. on October 8, 2002 at the BLM/USFS Public Lands Center, Durango, Colorado and the other beginning at 5 p.m. on October 9, 2002 at the Bayfield High School, in Bayfield, Colorado.

ADDRESSES: Comments should be sent to the San Juan National Forest, Attn: Dave Dallison, 15 Burnett Court, Durango, Colorado 81301.

FOR FURTHER INFORMATION CONTACT: Ave Dallison or Jim Powers, (970) 247–4874.

SUPPLEMENTARY INFORMATION: The objective of the EIS will be to assess timber salvage opportunities and impacts within the described Missionary Ridge burn area of southwestern Colorado. The proposed action potentially impacts various natural and human resources including, forested ecosystems, water resources, biological resources (*e.g.,* threatened and endangered species), wildlife, cultural resources, visual quality, the socioeconomic environment and others that are identified through the scoping process.

The proposed action involves recovering a portion of timber that will be lost through burn mortality, and removing insect infested trees to suppress post fire insect damage to live trees. An estimated 400 million board feet of timber was killed within the 70,000-acre burn area. We anticipate analyzing alternatives that will involve salvaging timber from 6,000 to 15,000 acres. All areas considered for salvage harvest are roaded. The alternatives will examine harvesting using ground based skidding equipment and ground based equipment in combination with skyline and helicopter logging systems. One alternative will examine harvesting within the roaded portion to the 50,000-acre Florida River Roadless Area. There are 3,700 acres that are roaded and previously harvested within the Florida River RARE II boundaries.

It is anticipated that the EIS process will take eight months to complete and will include public information and meetings. We anticipate publishing the Record of Decision in May 2003. Public information, scoping meetings, and request for input on the EIS will begin with publication of this notice. Written comments must be submitted on or before October 25, 2002.

The Deciding Official will be the Regional Forester, USDA Forest Service—Rocky Mountain Region, P.O. Box 25127, Lakewood CO 80225.

We except to publish a draft environmental impact statement in early 2003, to ask for public comment on the draft material for a period of 45 days, and to complete a final environmental impact statement in May 2003.

The 45 day public comment period on the draft environmental impact statement will commence on the day the Environmental Protection Agency publishes a ''Notice of Availability'' in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage 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 Heitgages, 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 on 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.) Please note that comments you make on the draft environmental impact statement will be regarded as public information.

Dated: September 25, 2002.

Rick Brazell,

Acting Forest Supervisor, San Juan National Forest, USFS, Colorado.

[FR Doc. 02–24413 Filed 9–25–02; 8:45 am]

BILLING CODE 3410–BS–M

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Public Law 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, October 21, 2002. The Madera Resource Advisory Committee will meet at the Spring Valley Elementary School in O'Neals, CA. The purpose of the meeting is an update about the RAC presentation at the Madera County Board of Supervisor's meeting September 17, 2002, update RAC committee outreach, discuss a subject for a news article and develop a planning schedule for projects and project reviews.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, October 21, 2002. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Spring Valley Elementary School, 46655 Road 200, O'Neals, CA 93645.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, 57003 Road 225, North Fork, CA 93643, (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Update from the RAC presentation at the Madera County Board of Supervisor's meeting September 17, 2002, (2) update on RAC committee outreach, and, (3) discuss subject for news article (4) develop a planning schedule for projects and project review. 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: September 20, 2002.

David W. Martin,

District Ranger.

[FR Doc. 02–24412 Filed 9–25–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Western Washington Cascades Provincial Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Western Washington Cascades Provincial Interagency Executive Committee Advisory Committee (Provincial Advisory Committee) will meet on Friday, October 18th, at the Darrington Ranger District Office, 1405 Emens Street, Darrington, WA 98241.

The meeting will begin at 9:30 a.m. and continue until about 12 noon. The focus will be the vegetative management program on the Forest. In addition to the Advisory Committee meeting, a field trip for Advisory Committee members will take place in the afternoon. Members will tour portions of two thinning stands on the Darrington Ranger District, commencing at 12:30 p.m. at the District Office and ending back at the same office about 4:30 p.m. The purpose of the trip is to discuss issues, opportunities, and concerns in the area of vegetative management. All Western Washington Cascades Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Interested citizens are also welcome to join the field trip; however, they must provide their own transportation.

The Provincial Advisory Committee provides advice regarding ecosystem management for federal lands within the Western Washington Cascades Province, as well as advice and recommendations to promote better integration of forest management activities among federal and non-federal entities. The Advisory Committee is a key element of implementation of the Northwest Forest Plan.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Penny Sundblad, Province Liaison, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 State Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 321).

Dated: September 20, 2002.

Jon Vanderheyden,

Acting Designated Federal Official.

[FR Doc. 02–24482 Filed 9–25–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Privatization Committee Meeting.

TIME AND DATE: 9 a.m., Thursday, October 3, 2002.

PLACE: Conference Room 5030—South Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: The business advisor will report on the status of current privatization projects.

FOR MORE INFORMATION CONTACT: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: September 19, 2002.

Hilda Gay Legg,

Governor, Rural Telephone Bank.

[FR Doc. 02–24595 Filed 9–24–02; 11:01 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Notice of Extension of Time Limit of Preliminary Results of New Shipper Review: Freshwater Crawfish Tail Meat From the People's Republic of China

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

SUMMARY: The Department of Commerce is extending the time limit of the preliminary results of the new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China until no later than November 22, 2002. The period of review is September 1, 2001,

through February 28, 2002. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: September 26, 2002.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Scott Lindsay, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–3782 or (202) 482–0780, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statutes and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 351 (2002).

Statutory Time Limits

Section 351.214(i) of the regulations requires the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated, and final results of review within 90 days after the date on which the preliminary results were issued. However, if the Department determines the issues are extraordinarily complicated, section 351.214(i)(2) of the regulations allows the Department to extend the deadline for the preliminary results to up to 300 days after the date on which the new shipper review was initiated.

Background

On March 29, 2002 the Department received a timely request from Weishan Zhenyu Foodstuff Co., Ltd. (Zhenyu), in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the regulations, for a new shipper of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (''PRC''), which has a September anniversary date. On April 23, 2002 the Department initiated this new shipper review covering the period September 1, 2001, through February 28, 2002. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Review* (67 FR 21218). The preliminary results of review are currently due October 20, 2002.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(2)(B) of the Act, the Department may extend the deadline for completion of the preliminary results of a new shipper review if it determines that the case is extraordinarily complicated. The Department has determined that this case is extraordinarily complicated, and the preliminary results of this new shipper review cannot be completed within the statutory time limit of 180 days. The Department finds that this new shipper review is extraordinarily complicated because there are a number of issues that must be addressed. For example, the Department has prepared a supplemental questionnaire requesting additional information on the respondent's claims concerning affiliation and date of sale. Given the issues in this case, the Department may find it necessary to request even more information in this new shipper review. Therefore, in accordance with section 351.214(i)(2) of the regulations, the Department is extending the time limit for the completion of preliminary results by thirty-three days. The preliminary results will now be due no later than November 22, 2002.

This notice is published pursuant to sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: September 19, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–24479 Filed 9–25–02; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0048, Off-Exchange Agricultural Trade Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to off-exchange agricultural trade options.

DATES: Comments must be submitted on or before November 25, 2002.

ADDRESSES: Comments may be mailed to Judith E. Payne, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Judith E. Payne, (202) 418–5268; FAX: (202) 418–5527; e-mail: *jpayne@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

Off-Exchange Agricultural Trade Options, OMB control number 3038–0048—Extension

In April 1998, the CFTC removed the prohibition of off-exchange trade options on the enumerated agricultural commodities subject to a number of regulatory requirements 63 FR 18821 (Apr. 16, 1998). Thereafter, the Commission streamlined the regulatory and paperwork burdens in order to

increase the utility of agricultural trade options while maintaining basic customer protections. 64 FR 68011 (Dec. 6, 1999). Based on its experience in administering this program, the Commission is reducing its estimates of the burden of this collection of information based on revised assumptions of the number of firms and individuals that may apply for registration. Responses to the collection of information are mandatory pursuant to section 4c(b) of the Commodity Exchange Act.

The Commission estimates the burden of this collection of information s follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR part 32	360	On occasion	411	5.59	2,301

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: September 20, 2002.

Catherine D. Dixon,

Assistance Secretary of the Commission.

[FR Doc. 02–24430 Filed 9–25–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by October 28, 2002.

Title, Form, and OMB Number: Custodianship Certificate to Support Claim on Behalf of Minor Children of Deceased Members of the Armed Forces; DD Form 2790; OMB Number 0730–0010.

Type of Request: Reinstatement.

Number of Respondents: 300.

Responses per Respondent: 1.

Annual Responses: 300.

Average Burden per Response: 24 minutes.

Annual Burden Hours: 120.

Needs and Uses: The form is used by the Directorate of Annuity Pay, Defense Finance and Accounting Services, Denver (DFAS–DE), to pay the annuity to the correct person on behalf of a child under the age of majority. If the form with the completed certification is not received, the annuity payments are suspended. An annuity for a minor child is paid to the legal guardian, or, if there is no legal guardian, to the natural parent who has care, custody, and control of the child as the custodian, or to a representative payee of the child.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jackie Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing. Written request for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 125 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 19, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–24394 Filed 9–25–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received October 28, 2002.

Title, Form, and OMB Number: Child Annuitant's School Certification; DD Form 2788; OMB Number 0730–0001.

Number of Respondents: 3,600.

Responses per Respondent: 1.

Annual Responses: 3,600.

Average Burden per Response: 12 minutes.

Annual Burden Hours: 720.

Needs and Uses: In accordance with 10 U.S.C. 1447 and DoD Financial Management Regulation, 7000.14–R, Volume 7B, a child annuitant between the age of 18 and 22 years of age must provide evidence of intent to continue study or training at a recognized educational institution. The certificate is required for the school semester or other period in which the school year is divided. The form is submitted to the child for completion and return to the Defense Finance and Accounting Service. The child will certify as to their intent for future enrollment add a school official must certify on the past or present school enrollment of the child.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 19, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–24395 Filed 9–25–02; 8:45 am]

BILLING CODE 5601–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before November 25, 2002.

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

Dated: September 20, 2002.

John D. Tressler,

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

Federal Student Aid

Type of Review: Revision of a currently approved collection.

Title: Equity in Athletics Disclosure Act (EADA) (JS) *.

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 1800.

Burden Hours: 10800.

Abstract: The EADA amended the Higher Education Act of 1965, as amended (HEA), to require coeducational institutions of higher education that participate in any program under Title IV of the HEA and have an intercollegiate athletic program, annually to make available upon request a report on institutional financing and student and staff participation in men's and women's intercollegiate athletics. The Higher Education Amendments of 1998 amended the EADA to require additional disclosures, to require that an institution submit its report to the Department of Education, and to require the Department to report to Congress on gender equity in intercollegiate athletics and to make its report and institutions' EADA reports publicly available.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2151. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the e-mail address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

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

[FR Doc. 02–24418 Filed 9–25–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.274A]

Office of Postsecondary Education; American Overseas Research Centers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The American Overseas Research Centers (AORC) Program makes awards to any American overseas research center that is a consortium of United States institutions of higher education to enable the center to promote postgraduate research, exchanges, and area studies. AORC awards may be used to pay all or a portion of the cost of establishing or operating a center or program, including the cost of operation and maintenance of overseas facilities; the cost of organizing and managing conferences; the cost of teaching and research materials; the cost of acquisition, maintenance, and preservation of library collections; the cost of bringing visiting scholars and faculty to the center to teach or to conduct research; the cost of faculty and staff stipends and salaries; the cost of faculty, staff, and student travel; and, the cost of publication and dissemination of material for the scholarly and general public.

For FY 2003 the competition for new awards focuses on projects designed to meet the priorities described in the *Priorities* section of this application notice.

Eligible Applicants: Centers that (1) receive more than 50 percent of their funding from public or private United States sources; (2) have a permanent presence in the country in which the center is located; and (3) are organizations described in section 501(c)(3) of the Internal Revenue Code of 1986, which are exempt from taxation under section 501(a) of the Code.

Applications Available: October 11, 2002.

Deadline for Transmittal of Applications: November 15, 2002.

Deadline for Intergovernmental Review: January 14, 2003.

Estimated Available Funds: The Administration has requested $1,000,000 for this program for FY 2003. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process, if Congress appropriates funds for this program.

Estimated Range of Awards: $38,378—$126,509.

Estimated Average Size of Awards: $76,923 per year.

Estimated Number of Awards: 13.

Note: The Department is not bound by any estimates in this notice.

Project Period: 48 months.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the narrative to the equivalent of no more than 25 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures and graphs.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However you may use a 10-point font in charts, tables, figures, and graphs.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract or the appendices. However, you must include all of the application narrative in responding to the selection criteria.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

Note: The AORC Program does not have program specific regulations; therefore, applicants are directed to the authorizing statute, section 609 of part A, title VI of the Higher Education Act of 1965, as amended.

Priorities

Invitational Priority

We are particularly interested in applications that meet the following priority.

Activities and programs designed to promote information sharing among U.S. researchers using the overseas centers.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the priority a competitive or absolute preference over other applications.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998, (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999, (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications for the FY 2003 AORC Program competition for new awards be submitted electronically using e-APPLICATION available through the Education Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

Applicants who are unable to submit an application through the e-GRANTS system may apply for a waiver to the electronic submission requirement. To apply for a waiver, applicants must explain the reason(s) that prevent them from using the Internet to submit their applications. The reason(s) must be outlined in a letter addressed to Cheryl E. Gibbs, U.S. Department of Education, 1990 K Street, NW., Suite 6000, Washington, DC 20006–8521. Please submit your letter no later than two weeks before the deadline for transmittal of applications.

Any application that receives a waiver to the electronic submission requirement will be given the same consideration in the review process as an electronic application.

Waiver of Proposed Rulemaking

Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The AORC Program (CFDA 84.274A) is one of the programs included in the pilot project. If you are an applicant under the AORC Program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administrative and Payment System (GAPS). We shall continue to evaluate its success and solicit suggestions for improvement.

Please note the following:

• Do not wait until the deadline date for the transmittal of applications to submit your application electronically. If you wait until the deadline date to submit your application electronically and you are unable to access the e-APPLICATION system, you must contact the Help Desk by 4:30 p.m. Washington, DC time on the deadline date.

• Keep in mind that e-APPLICATION is not operational 24 hours a day 7 days a week. Click on Hours of Web Site Operation for specific hours of access during the week.

• You will have access to the e-APPLICATION Help Desk for technical support: 1–888–336–8930 (TTY: 1–866–697–2696, local 202–401–8363). The Help Desk hours of operation are limited to: 8 a.m.–6 p.m. Washington DC time Monday–Friday.

• You can submit all documents electronically, including the Application for Federal Assistance (ED 424 Standard Face Sheet), Budget Information-Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424 Standard Face Sheet) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.

2. Make sure that the applicant's Authorized Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

4. Place the PR/Award number in the upper right hand corner of ED 424.

5. Fax ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the AORC Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

FOR FURTHER INFORMATION CONTACT: Cheryl E. Gibbs, International Education and Graduate Programs Service, U.S. Department of Education, 1990 K Street, NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7634 or via Internet: *cheryl.gibbs@ed.gov.*

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

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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

You may also view this document in PDF at the following site: *http://www.ed.gov/offices/OPE/HEP/iegps/.*

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

Program Authority: 20 U.S.C. 1128a.

Dated: September 23, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–24434 Filed 9–25–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.017A]

Office of Postsecondary Education; International Research and Studies Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The International Research and Studies Program provides grants to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and other international fields.

For FY 2003, the competition focuses on projects designed to meet the priorities we describe in the *Priorities* section of this notice.

Eligible Applicants: Public and private agencies, organizations, institutions, and individuals.

Applications Available: September 25, 2002.

Deadline for Transmittal of Applications: November 4, 2002.

Estimated Available Funds: The Administration has requested $5,200,000 for this program for FY 2003. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $55,000—$155,000 per year.

Estimated Average Size of Awards: $109,818 per year.

Estimated Number of Awards: 26.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the narrative to the equivalent of no more than 30 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However you may use a 10-point font in charts, tables, figures, and graphs.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract or the appendices. However, you must include all of the application narrative in Section C.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 85, 86, 97, 98, and 99; (b) The regulations in 34 CFR part 655; and (c) The regulations for this program in 34 CFR part 660.

Priorities

Absolute Priority

This competition focuses on projects designed to meet a priority in the regulations for this program (34 CFR 660.34(a)(2)).

Materials development: Projects to develop instructional materials for the languages or regions of the Near or Middle East, South Asia, Southeast Asia, Eastern Europe, Inner Asia, the Far East, Africa or Latin America.

Under 34 CFR 75.105(c)(3) we consider only applications that meet the priority.

Invitational Priorities

Within the absolute priority specified in this application notice, we are particularly interested in applications that meet the following invitational priorities.

Invitational Priority 1

The development of specialized materials for use in teaching the languages of the Islamic nations of the Middle East and Central Asia.

Invitational Priority 2

The development of specialized materials for use in teaching the languages of South Asia.

Under 34 CFR 75.105(c)(1) we do not give an application that meets one or more of the invitational priorities a competitive or absolute preference over other applications.

Instructions for Transmittal of Applications

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) 34 CFR 75.102. Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes

only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The International Research and Studies Program—CFDA 84.017A is one of the programs included in the pilot project. If you are an applicant under the International Research and Studies Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in the pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents, except transcripts, electronically, including the Application for Federal Assistance (ED 424), Budget Information-Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

Note: Please note that due to the Department's end of the fiscal year close out activities, the e-APPLICATION system will be unavailable on October 1. It will become available for users again on Wednesday, October 2.

You may access the electronic grant application for the International Research and Studies Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: The application for this program is available at: *www.ed.gov/offices/OPE/HEP/iegps/irs.html.* Jose L. Martinez, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K Street NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7635, or via Internet: *jose.martinez@ed.gov.*

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

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.**

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

Program Authority: 20 U.S.C. 1125.

Dated: September 23, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–24435 Filed 9–25–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.015A and B]

Office of Postsecondary Education; National Resource Centers (NRC) Program for Foreign Language and Area Studies or Foreign Language and International Studies and Foreign Language and Area Studies (FLAS) Fellowships Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Programs: The NRC Program makes awards to institutions of higher education for establishing or strengthening nationally recognized foreign language and area or international studies centers or programs. NRC awards are used to support undergraduate centers or comprehensive centers, which include undergraduate, graduate, and professional school components.

The FLAS Program awards allocations of fellowships to institutions of higher education to assist meritorious students undergoing graduate training in modern foreign languages and related areas or international studies. FLAS allocations may be used for academic year and summer fellowships.

For fiscal year (FY) 2003 the competition focuses on projects designed to meet the priorities we describe in the *Priorities* section of this notice.

Eligible Applicants: Institutions of higher education and consortia of institutions of higher education.

Applications Available: September 25, 2002.

Deadline for Transmittal of Applications: November 12, 2002.

Deadline for Intergovernmental Review: January 11, 2003.

Estimated Available Funds: The Administration has requested $28,715,000 for the NRC Program and $26,435,000 for the FLAS Program for FY 2003. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for these programs.

Estimated Range of Awards: $202,000—$318,000 per year for the NRC Program and $31,000—$372,000 per year for the FLAS Program.

Estimated Average Size of Awards: $231,573 per year for the NRC Program and $204,922 per year for the FLAS Program.

Estimated Number of Awards: 124 NRC awards and 129 FLAS awards. We anticipate the 129 FLAS awards to yield 923 academic year fellowships and 560 summer fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months, beginning August 15, 2003.

SUPPLEMENTARY INFORMATION:

FLAS Program Subsistence Allowance

The subsistence allowance for a fellowship for academic year 2003–2004 will be $14,000 and the allowance for a summer 2004 fellowship will be $2,400.

FLAS Program Institutional Payment

The institutional payment in lieu of tuition for a fellowship for academic year 2003–2004 will be $11,000 and the payment for a summer 2004 fellowship will be $3,600.

FLAS Program Travel Award

A travel award for $1,000 or the actual cost of travel, whichever is less, may be requested in conjunction with summer fellowships that are to be used at language program sites other than the student's home institution.

An applicant's FLAS Program budget should reflect $25,000 for each academic year fellowship requested, $6,000 for each summer fellowship requested, and $1,000 for each summer travel award requested.

Note: FLAS Program awards do not include allowances for dependents.

Page Limit

The application narrative (Section C of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the narrative to the equivalent of no more than 35 pages for a single institution application or the equivalent of no more than 45 pages for a consortium application, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However you may use a 10-point font in charts, tables, figures, and graphs.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract or the appendices. However, you must include all of the application narrative in Section C.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99. (b) The regulations for the NRC Program in 34 CFR part 656. (c) The regulations for the FLAS Program in 34 CFR part 657. (d) The regulations in 34 CFR part 655.

Priorities

Absolute Priority

This competition focuses on projects designed to meet a priority in the regulations for the NRC Program (34 CFR 656.23(a)(4)).

Teacher training activities: An NRC project funded under this priority must focus on teacher training activities on the language, languages, area studies, or general topic of the center.

Under 34 CFR 75.105(c)(3) we consider only applications that meet the priority.

Invitational Priorities

Within the absolute priority listed in this application notice, we are particularly interested in applications that meet one or more of the following invitational priorities.

NRC Program Invitational Priority 1

Activities designed to increase the number of international experts, including those entering government service and various professional disciplines, with in-depth knowledge of Islamic societies and high-level language proficiency in the languages of those societies.

NRC Program Invitational Priority 2

Activities designed to strengthen the quality of the center's language program so that students can attain advanced language proficiency in the less and least commonly taught languages.

NRC Program Invitational Priority 3

Linkages with schools of education designed to improve teacher training in foreign languages, area, or international studies with an emphasis on the less commonly taught languages and areas of the world where those languages are spoken.

NRC Program Invitational Priority 4

Activities that engage the language resources of local heritage communities where appropriate.

NRC Program Invitational Priority 5

Collaboration with Title VI language resource centers, the centers for international business education, and the American overseas research centers with a focus on the less and least commonly taught languages and underrepresented professional disciplines.

FLAS Program Invitational Priority 1

Fellowships to students in the least commonly taught languages who are pursuing advanced level language proficiency.

FLAS Program Invitational Priority 2

Fellowships to talented students pursuing master's degrees who may be more likely to pursue government service.

Under 34 CFR 75.105(c)(1) we do not give an application that meets one or more of the invitational priorities a competitive or absolute preference over other applications.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: Cheryl E. Gibbs, Ed McDermott, Karla Ver Bryck Block, or Amy Wilson, International Education and Graduate Programs Service, U.S. Department of Education, 1990 K Street, NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7700 or via Internet: *OPE_NRC–FLAS@ed.gov*.

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

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to a program contact person listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT**.

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Program Authority: 22 U.S.C. 1122.

Dated: September 23, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–24436 Filed 9–25–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–546–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 19, 2002.

Take notice that on September 13, 2002, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets to become effective on October 1, 2002:

Nineteenth Revised Sheet No. 36
Fifth Revised Sheet No. 36A
Fifth Revised Sheet No. 690

Algonquin proposes to revise Section 34.2, ''Rate Schedules Subject to ACA Surcharge'', of the General Terms and Conditions of Algonquin's FERC Gas Tariff, Fourth Revised Volume No.1, and its AFT-CL Rate tariff sheets to state that the Annual Charge Adjustment (ACA) Unit Surcharge will only be assessed once on the same volume of gas transported on Algonquin's pipeline system. An AFT-CL Customer transporting gas volumes under an AFT-CL Rate Schedule will only be assessed an ACA Surcharge when the AFT-CL Customer does not pay an ACA Surcharge for the same volumes of gas transported under another Algonquin rate schedule.

Algonquin states that copies of this filing were served on all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–24331 Filed 9–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–41–000]

ANR Pipeline Company; Notice of Material Deviation Filing

September 19, 2002.

Take notice that on September 10, 2002, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised No. 1, the following tariff sheet, with an effective date October 10, 2002:

Ninth Revised Sheet No. 190

ANR states that the tariff sheet is being filed to list two agreements as non-conforming agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before September 26, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–24321 Filed 9–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–42–000]

ANR Pipeline Company; Notice of Material Deviation Filing

September 19, 2002.

Take notice that on September 10, 2002, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised No. 1, the following tariff sheet, with an effective date of October 10, 2002:

Tenth Revised Sheet No. 190

ANR states that the tariff sheet is being filed to list two agreements as non-conforming agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before September 26, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–24322 Filed 9–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–544–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

September 19, 2002.

Take notice that on September 13, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective October 14, 2002:

Sixth Revised Volume No. 1
Sixth Revised Sheet No. 20
Fourth Revised Sheet No. 21
Fourth Revised Sheet No. 22
Fourth Revised Sheet No. 23
Fourth Revised Sheet No. 24

In order to facilitate Gulf South's new interconnect with Gulfstream Natural Gas System, L.L.C., Gulf South has filed tariff sheets to include SLN 21264. No other changes are being proposed to Gulf South's terms and conditions or its rates.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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)502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–24329 Filed 9–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–545–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

September 19, 2002.

Take notice that on September 13, 2002, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective on October 1, 2002:

Third Revised Sheet No. 12
Third Revised Sheet No. 13
Third Revised Sheet No. 14
First Revised Sheet No. 297

Maritimes proposes to revise Section 21.2, ''Rate Schedules Subject to ACA Surcharge'', of the General Terms and Conditions of Maritimes FERC Gas Tariff, First Revised Volume No. 1, and its MNLFT Rate Tariff Sheets Nos. 12, 13 and 14 to state that the Annual Charge Adjustment (ACA) Unit Surcharge will only be assessed once on the same volume of gas transported on Maritimes pipeline system. A MNLFT Customer transporting gas volumes under a MNLFT Rate Schedule will only be assessed an ACA Surcharge when the MNLFT Customer does not pay an ACA Surcharge for the same volumes of gas transported under another Maritimes rate schedule.

Maritimes states that copies of this filing were served on all affected customers of Maritimes and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–24330 Filed 9–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–547–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 19, 2002.

Take notice that on September 16, 2002, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with a proposed effective date of October 16, 2002.

National Fuel states that the purpose of the instant filing is to revise Section 10.8 of the General Terms and Conditions (1) to provide it with explicit authority to terminate capacity release awards under a Master Service Agreement for Capacity Release Transactions upon the termination of the agreement or award of the releasing shipper, and (2) to provide replacement shippers with certain rights to contract for the capacity covered by such terminated awards.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–24332 Filed 9–18–02; 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

September 20, 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. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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) 502–8222 or for TTY, (202) 208–1659.

EXEMPT

Docket No.	Date filed	Presenter or requester
1. CP01–415–000	8–24–02	Donald A. Kirkman.
2. Project No. 1927–000	9–16–02	Marti Salk.
3. CP00–40–008	9–19–02	Mr. and Mrs. Edward James.
4. CP00–40–008	9–19–02	Mr. and Mrs. Edward James.
5. CP01–415–000	9–20–02	Peter M. Hendricks, P.E.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–24569 Filed 9–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP95–197–044 and RP97–71–036]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

September 19, 2002.

Take notice that on September 13, 2002 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets listed on Appendix A attached to the filing, which contains the enumeration and effective date of the revised tariff sheets.

On August 30, 2002 Transco submitted with the Commission a filing in Docket Nos. RP–95–197–042 and RP97–71–034 in which Transco proposed to revise its settlement rates in Docket No. RP01–245–000 to implement the roll-in of the costs of Transco's Leidy Line and Southern expansion projects as authorized by various Commission orders in Transco's Docket Nos. RP95–197 and RP97–71 proceeding, and to comply with the Commission's finding in that proceeding that Transco must unbundle the cost of its Emergency Eminence Storage Withdrawal Service (Roll-In Filing).[1] Subsequent to the Roll-In Filing, several of Transco's customers have expressed concerns regarding Transco's presentation of the Emergency Eminence Storage Withdrawal Service Charge (Emergency Eminence Charge) on the filed tariff sheets.

In order to address these concerns and to clarify any confusion regarding the applicability of the Emergency Eminence Charge, Transco is submitting certain substitute tariff sheets as enumerated in Appendix A attached to the filing. In that regard, the tariff sheets submitted in the instant filing clarify that the Emergency Eminence Charge shall only apply to those contracts that have Transportation Contract Quantity (TCQ) entitlements at the point on Transco's mainline system where Transco's facilities interconnect the Eminence Storage Field facilities.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website 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)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

[1] On September 5, 2001 Transco submitted certain substitute tariff sheets to supplement its filing in Docket Nos. RP95–197–042 and RP97–71–34 in order to correct an error in the Annual Charge Adjustment (ACA) rate.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–24325 Filed 9–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–197–045 and RP97–71–037]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

September 19, 2002.

Take notice that on September 13, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets which tariff sheets are enumerated in Appendix A attached to the filing. The proposed effective date of the tariff sheets is November 1, 2002.

Transco states that the purpose of this filing is to comply with the Commission's Order on Initial Decision issued on April 16, 1999 and Order on Rehearing issued on March 28, 2001 in the referenced dockets, which orders, among other things, directed Transco to unbundle its Rate Schedule SS–1 storage service.

Transco states that it will serve copies of the instant filing on its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's web site 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)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *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. 02–24326 Filed 9–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–236–007, RP00–553–010 and RP00–481–005]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

September 19, 2002.

Take notice that on September 13, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A, attached to the filing, contains the enumeration of the proposed tariff sheets.

Transco states that the purpose of this filing is to comply with the Commission's Order on Compliance issued on August 29, 2002 in the referenced dockets, in which the Commission directed Transco to refile the tariff sheets made effective October 1, 2002 to eliminate references to

Transco's new business system, 1Line Transco states that it will serve copies of the instant filing on its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *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. 02–24327 Filed 9–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–540–000]

Young Gas Storage Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

September 19, 2002.

Take notice that on September 10, 2002, Young Gas Storage Company, Ltd. (Young) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective October 11, 2002:

Seventh Revised Sheet No. 97
Third Revised Sheet No. 98

The proposed tariff provision limits, under certain circumstances, the liability of a municipality in the event its utility defaults on its payment obligations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–24328 Filed 9–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–185–000, et al.]

FPL Energy Seabrook, LLC, et al.; Electric Rate and Corporate Regulation Filings

September 18, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. FPL Energy Seabrook, LLC

[Docket No. EG02–185–000]

Take notice that on September 13, 2002, FPL Energy Seabrook, LLC, c/o FPL Energy, LLC, 700 Universe Boulevard, Juno Beach, FL 33408, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The applicant states that it is a limited liability company that will engage directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in the United States and selling electric energy at wholesale. The applicant proposes to own the Seabrook Nuclear Generating Station, located in the Town of Seabrook, the Town of Hampton and the Town of Hampton Falls, New Hampshire, and related facilities. The applicant seeks a determination of its exempt wholesale generator status. All electric energy sold by the applicant will be sold exclusively at wholesale.

Comment Date: October 9, 2002.

2. CMS Generation Michigan Power, L.L.C.

[Docket No. ER99–3677–001]

Take notice that on September 13, 2002 CMS Generation Michigan Power, L.L.C. tendered for filing an updated market power analysis in accordance with the order issued by the Federal Energy Regulatory Commission dated September 15, 1999, in Docket No. ER99–3677–000.

Comment Date: October 4, 2002.

3. Dearborn Industrial Generation, L.L.C.

[Docket Nos. ER02–1689–003]

Take notice that on September 13, 2002, Dearborn Industrial Generation, L.L.C. (DIG) tendered for filing with the Federal Energy Regulatory Commission (Commission), an amendment to its filing in these dockets in compliance with the Commission's August 30, 2002, order herein.

DIG intends to make sales of ancillary services at market-based rates, in addition to engaging in electric power and energy purchases and sales at market-based rates, which were previously authorized by FERC on February 27, 2001.

Comment Date: October 4, 2002.

4. Occidental Power Services, Inc.

[Docket No. ER02–1947–001]

Take notice that on September 10, 2002, Occidental Power Services, Inc. (Occidental) filed an Application for Blanket Authorization, Certain Waivers, and Order Approving Rate Schedule for Sale of Electric Capacity and Energy at Market-Based Rates. The Commission approved this application and issued an Order on July 30, 2002.

Occidental has identified several minor factual errors in the Application and herewith submits a redline version of the revised Application.

Comment Date: October 1, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–24320 Filed 9–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–127–000, et al.]

PPL Electric Utilities Corporation, et al.; Electric Rate and Corporate Regulation Filings

September 17, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PPL Electric Utilities Corporation

[Docket No. EL02–127–000]

Take notice that on August 30, 2002, PPL Electric Utilities Corporation (PPL Electric) tendered for filing with the Federal Energy Regulatory Commission (Commission)a request for waiver of the requirement to make its Form No. 715 (Annual Transmission Planning and Evaluation Report) available to the public upon requests. PPL Electric is requesting a waiver to permit it to provide to the public the same information that the Commission posts on its website from PPL Electric's Form No. 715, which will not include information deemed too sensitive for release by the Commission.

Comment Date: September 30, 2002.

2. Cinergy Services, Inc.

[Docket No. ER02–1666–002]

Take notice that on September 13, 2002, Cinergy Services, Inc. (Cinergy), as agent for PSI Energy, Inc. (PSI), re-submitted for filing an Interconnection Agreement between Indianapolis Power & Light Company (IPL) and PSI to comply with the Commission's order of August 15, 2002 in this docket.

Cinergy states that it has served a copy of the filing upon the Indiana Utility Regulatory Commission and Indianapolis Power & Light Company.

Comment Date: October 4, 2002.

3. Central Maine Power Company

[Docket No. ER02–2135–001]

Take notice that on September 13, 2002 , Central Maine Power Company (CMP) submitted the Support Service Agreement between CMP and Maine Electric Power Company (MEPCO), corrected as to Order 614 markings, and designated as Original Rate Schedule FERC No. 115, First Revised, with an effective date of January 1, 2002.

Comment Date: October 4, 2002.

4. PECO Energy Company

[Docket No. ER02–2341–001]

Take notice that on September 13, 2002, PECO Energy Company (PECO) submitted for filing a revised Interconnection Agreement by and between PECO and Visteon Corporation (Visteon) for Generation Interconnection and Parallel Operation, designated as Service Agreement No. 703 under PJM Interconnection, L.L.C.''s FERC Electric Tariff, Fourth Revised Volume No. 1. The Interconnection Agreement was revised to reflect an effective date of July 18, 2002, as opposed to July 1, 2002, which was requested in the original filing. Copies of this filing were served on Visteon and PJM.

Comment Date: October 4, 2002.

5. Cargill Power Markets, LLC

[Docket No.ER02–2551–000]

Take notice that on September 13, 2002, Cargill Power Markets, LLC (Cargill Power Markets), submitted to the Federal Energy Regulatory Commission (FERC or the Commission) a Notice of Succession notifying the Commission that is has succeeded to the market-based rate wholesale power sales rate schedule (the Rate Schedule) of Cargill-Alliant, LLC, First Revised Rate Schedule FERC No. 1. In addition, Cargill Power Markets files the Rate Schedule, updated as appropriate and in conformance with Order Nos. 614 and 2001, as a Cargill Power Markets, LLC, Original Rate Schedule FERC No. 1.

Comment Date: October 4, 2002.

6. Atlantic City Electric Company

[Docket No. ER02–2484–000]

Take notice that on September 13, 2002, Atlantic City Electric Company withdrew its filing in the above-captioned proceeding. Copies of the filing were served upon the customer.

Comment Date: October 4, 2002.

7. UAE Lowell Power LLC

[Docket No. ER99–1744–003]

Take notice that on August 16, 2002, as amended on September 6, 2002, UAE Lowell Power LLC tendered for filing their triennial market power updates in support of authorization to engage in wholesale sales of electric energy at market-based rates.

Comment Date: September 27, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–24285 Filed 9–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–232—Oklahoma]

Grand River Dam Authority; Notice of Availability of Draft Environmental Assessment

September 19, 2002.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR part 380), Commission staff have reviewed an application for non-project use of project lands and waters at the Pensacola Project (FERC No. 1494), and have prepared a draft Environmental Assessment (EA) on the application. The project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

Specifically, the project licensee (Grand River Dam Authority) has requested Commission approval to permit Joe Harwood d/b/a Arrowhead Investment & Development Company to expand and modernize an existing marina located on the Duck Creek arm of Grand Lake, the project reservoir. In the draft EA, Commission staff have analyzed the probable environmental effects of the proposed marina improvements and have concluded that approval of the proposal, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the draft EA are available for review in Public Reference Room 2-A of the Commission's offices at 888 First Street, NE, Washington, DC. The draft EA also may be viewed on the Commission's Internet Web site (*www.ferc.gov*) using the ''FERRIS'' link. Additional information about the project is available from the Commission's Office of External Affairs, at (202) 502–8004, or on the Commission's website using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at (202) 502–8222, TTY (202) 502–8659. The FERRIS link on the FERC's Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Any comments on the draft EA should be filed within 30 days of the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please reference ''Pensacola Project, FERC Project No. 1494–232'' on all comments. Comments may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–24323 Filed 9–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2364–013, 2365–024 Maine]

Madison Paper Industries, Inc.; Notice of Availability of Environmental Assessment

September 19, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the applications for new licenses for the Anson and Abenaki Hydroelectric Projects, located on the Kennebec River in Somerset County, Maine, and has prepared an Environmental Assessment (EA) for the project. The projects do not occupy any federal lands.

The EA contains the staff's analyzes of the potential environmental impacts of the projects and concludes that licensing the projects, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the FEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website 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) 502–8222 or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project Nos. 2364–013 and 2365–024 to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

For further information, contact Nan Allen at 202–502–6128.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–24324 Filed 9–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Commitment To Purchase a Custom Product, Central Valley Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Extension.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing administration of DOE, published its final 2004 Power Marketing Plan (Marketing Plan) for the Sierra Nevada Customer Service Region (Sierra Nevada Region) in the **Federal Register**. This notice extends the commitment date to purchase a Custom Product from the Sierra Nevada Region.

DATES: Existing customers and Resource Pool allottees interested in purchasing a Custom Product must provide written notice to the Sierra Nevada Region of their interest on or before June 30, 2003, and must commit to that purchase by executing a contract on or before June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas R. Boyko, Power Marketing Manager, Western Area Power Administration, Sierra Nevada Customer Service Region, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4421 or *boyko@wapa.gov.*

SUPPLEMENTARY INFORMATION:

Authorities

The Marketing Plan for marketing power by the Sierra Nevada Region after 2004, published in the **Federal Register** (64 FR 34417) on June 25, 1999, including the subsequent Final Resource Pool Allocations, published in the **Federal Register** (65 FR 45976) on July 26, 2000, was established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101–7352); the Reclamation Act of June 17, 1902, (ch. 1093, 32 Stat. 388) as amended and supplemented by subsequent enactments, particularly section 9(c) of

the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts specifically applicable to the projects involved.

Background

The Marketing Plan describes how the Sierra Nevada Region will market its power resources from the Central Valley Project, Washoe Project, and other sources beginning January 1, 2005, through December 31, 2024. The 2005 Resource Pool was established for new power allocations, and those allocations were made to qualified entities. The Marketing Plan provided for making a Custom Product available to interested customers. The Custom Product is a combination of additional services such as supplemental power, scheduling agent and coordinator services, and ancillary services.

This notice provides an extension of time to commit to purchase the Custom Product. The Marketing Plan required a customer to commit to purchase the Custom Product by December 31, 2002. By this notice Western extends this date from December 31, 2002, to June 30, 2004. The customers must notify the Sierra Nevada Region on or before June 30, 2003, of their intention to participate in the Custom Product. Any customer deciding to purchase the Custom Product must sign a contract on or before June 30, 2004.

Dated: September 10, 2002.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 02–24426 Filed 9–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Parker-Davis Project—Extension of the Rate Methodology for Firm Power Service and Firm and Nonfirm Transmission Service—Rate Order No. WAPA–98

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order.

SUMMARY: This action is to extend the existing Parker-Davis Project (Parker-Davis) rate methodology for determining the firm power service rate and the firm and nonfirm point-to-point transmission service rates, established under Rate Order No. WAPA–75, through September 30, 2004. The existing Parker-Davis rate methodology will expire September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Statler, Financial Analyst, Desert Southwest Customer Service Region, Western Area Power Administration, PO Box 6457, Phoenix, AZ 85005–6457, (602) 352–2781, or e-mail *statler@wapa.gov*.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western Area Power Administration (Western), (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Pursuant to applicable Delegation Orders and existing Department of Energy (DOE) procedures for public participation in power and transmission rate adjustments in 10 CFR part 903, Western's Parker-Davis rate methodology for firm power service and firm and nonfirm point-to-point transmission service was submitted to FERC for confirmation and approval on November 19, 1997. On March 10, 1998, in Docket No. EF98–5041–000, at 82 FERC ¶ 62,164, FERC issued an order confirming, approving, and placing in effect on a final basis the Parker-Davis rate methodology for firm power service and firm and nonfirm point-to-point transmission service. The rate methodology set forth in Rate Order No. WAPA–75 was approved for the period beginning November 1, 1997, and ending September 30, 2002.

On September 30, 2002, Western's Parker-Davis rate methodology for firm power service and firm and nonfirm point-to-point transmission service will expire. Western has proposed that the existing Parker-Davis rate methodology be extended pursuant to 10 CFR part 903.23.

The Secretary of Energy is extending the existing Parker-Davis rate methodology that is used each Fiscal Year (FY) to calculate the firm power service rates for capacity and energy (Rate Schedule PD–F6), the firm point-to-point transmission service rate (Rate Schedule PD–FT6), the firm point-to-point transmission service rate for delivery of Salt Lake City Area Integrated Projects Power (Rate Schedule PD–FCT6) and the nonfirm point-to-point transmission service rate (Rate Schedule PD–NFT6). The existing Parker-Davis rate methodology collects annual revenues sufficient to recover annual expenses (including interest) and capital requirements, thus ensuring repayment of the project within the cost-recovery criteria set forth in DOE Order RA 6120.2. Under the existing Parker-Davis rate methodology, the revenue requirements for generation and transmission are determined annually based on FY projections in the cost apportionment study. The cost apportionment study allocates all Parker-Davis expenses and other revenues between generation and transmission. The revenue requirement for generation determines the amount of funds to collect through firm power service rates for capacity and energy. Similarly, the revenue requirement for transmission determines the amount of funds to collect through firm point-to-point transmission service rates.

During this extension period of the existing Parker-Davis rate methodology, Western will initiate a rate adjustment process in accordance with procedures for public participation in power and transmission rate adjustments in 10 CFR part 903. Western anticipates this rate adjustment process to begin when audited financial data for FY 2001 and FY 2002 becomes available. In the meantime, Western will continue to conduct informal customer meetings to ensure involvement of interested parties in the rate process.

In accordance with 10 CFR part 903.23(a)(2), Western did not have a consultation and comment period and did not hold public information and comment forums. The notice of proposed extension of the Parker-Davis rate methodology for firm power service and firm and nonfirm point-to-point transmission service was published in the **Federal Register** (67 FR 34702) on May 15, 2002.

Following review of Western's proposal within the Department of Energy, I approve, in the absence of a Deputy Secretary, Rate Order No. WAPA–98, which extends the existing Parker-Davis rate methodology for determining the firm power service rate and the firm and nonfirm point-to-point transmission service rates through September 30, 2004.

Dated: September 13, 2002.

Spencer Abraham,

Secretary.

Order Confirming and Approving an Extension of the Parker-Davis Project Rate Methodology for Firm Power Service and Firm and Nonfirm Transmission Service

This rate methodology was established pursuant to Section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7152(a)),

through which the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch.1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), were transferred to and vested in the Secretary of Energy (Secretary).

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western), (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This extension of rate methodology is issued pursuant to the Delegation Order and the Department of Energy (DOE) rate extension procedures at 10 CFR part 903.

Background

In the order issued March 10, 1998, in Docket No. EF98–5041–000, at 82 FERC ¶ 62,164, FERC confirmed, approved, and placed in effect on a final basis Rate Order No. WAPA–75, the Parker-Davis rate methodology for firm power service and firm and nonfirm point-to-point transmission service. The rate methodology set forth in Rate Order No. WAPA–75 was approved for the period beginning November 1, 1997, and ending September 30, 2002. On September 30, 2002, the Parker-Davis rate methodology for firm power service and firm and nonfirm point-to-point transmission service will expire. This makes it necessary to extend the existing Parker-Davis rate methodology pursuant to 10 CFR part 903. With this approval, Rate Order No. WAPA–75 will be extended under Rate Order No. WAPA–98.

Discussion

Western proposes to extend the existing Parker-Davis rate methodology used each Fiscal Year (FY) to calculate the firm power service rates for capacity and energy (Rate Schedule PD–F6), the firm point-to-point transmission service rate (Rate Schedule PD–FT6), the firm point-to-point transmission service rate for delivery of Salt Lake City Area Integrated Projects Power (Rate Schedule PD–FCT6) and the nonfirm point-to-point transmission service rate (Rate Schedule PD–NFT6). The existing Parker-Davis rate methodology provides for collecting annual revenues sufficient to recover annual expenses (including interest) and capital requirements, thus ensuring repayment of the project within the cost-recovery criteria set forth in DOE Order RA 6120.2. Under the existing Parker-Davis rate methodology, the revenue requirements for generation and transmission are determined annually based on FY projections in the cost apportionment study. The cost apportionment study allocates all Parker-Davis expenses and other revenues between generation and transmission. The revenue requirement for generation determines the amount of funds to collect through firm power service rates for capacity and energy. Similarly, the revenue requirement for transmission determines the amount of funds to collect through firm point-to-point transmission service.

During this extension period of the existing Parker-Davis rate methodology, Western will initiate a rate adjustment process in accordance with procedures for public participation in power and transmission rate adjustments in 10 CFR part 903. Western anticipates this rate adjustment process to begin when audited financial data for FY 2001 and FY 2002 becomes available. In the meantime, Western will continue to conduct informal customer meetings to ensure involvement of interested parties in the rate process.

In accordance with 10 CFR 903.23(a)(2), Western did not have a consultation and comment period and did not hold public information and comment forums. The notice of proposed extension of the Parker-Davis rate methodology for firm power service and firm and nonfirm point-to-point transmission service was published in the **Federal Register** (67 FR 34702) on May 15, 2002.

Order

In view of the foregoing, I hereby extend for a period effective October 1, 2002, and ending September 30, 2004, the existing Parker-Davis rate methodology for determining the firm power service rate and the firm and nonfirm point-to-point transmission service rates.

Dated: September 13, 2002.

Spencer Abraham,

Secretary.

[FR Doc. 02–24425 Filed 9–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Salt Lake City Area Integrated Projects and Colorado River Storage Project—Rate Order No. WAPA–99

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order.

SUMMARY: The Secretary of the Department of Energy (DOE) confirmed and approved Rate Order No. WAPA–99 and Rate Schedule SLIP–F7, placing firm power rates from the Salt Lake City Area Integrated Projects (SLCA/IP) of the Western Area Power Administration (Western) into effect on an interim basis. The Secretary also confirmed Rate Schedules SP–PTP6, SP–NW2, SP–NFT5, SP–SD2, SP–RS2, SP–EI2, SP–FR2, and SP–SSR2, placing firm and non-firm transmission rates and ancillary services rates on the Colorado River Storage Project (CRSP) transmission system into effect on an interim basis. The provisional rates will be in effect until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, repayment of investment, and irrigation aid within the allowable periods.

DATES: Rate Schedules SLIP–F7, SP–PTP6, SP–NW2, SP–NFT5, SP–SD2, SP–RS2, SP–EI2, SP–FR2, and SP–SSR2 will be placed into effect on an interim basis on the first day of the first full billing period beginning on October 1, 2002, and will be in effect until FERC confirms, approves, and places the rate schedules in effect on a final basis through September 30, 2007, or until the rate schedules are superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Bradley S. Warren, CRSP Manager, CRSP Management Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–6372, or Ms. Carol Loftin, Rates Manager, CRSP Management Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–6380, or e-mail *loftinc@wapa.gov.*

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy approved the existing Rate Schedule SLIP–F6 for SLCA/IP firm power, Rate Schedules SP–PTP5, SP–NW1, and SP–NFT4 for firm and non-firm transmission, and Rate Schedules SP–SD1, SP–RS1, SP–EI1, SP–FR1, and SP–SSR1 for ancillary

services on March 23, 1998 (Rate Order No. WAPA–78, April 6, 1998), and FERC confirmed and approved the rate schedules on July 17, 1998, in FERC Docket No. EF98–5171–000. The existing rate schedules became effective April 1, 1998, through March 30, 2003.

The existing firm power Rate Schedule is being superseded by Rate Schedule SLIP–F7. Under Rate Schedule SLIP–F6, the energy rate is 8.10 mills per kilowatthour (mills/kWh), and the capacity rate is $3.44 per kilowattmonth (kWmonth). The composite rate is 17.57 mills/kWh. The provisional firm power rate consists of an energy charge of 9.5 mills/kWh and a capacity charge of $4.04 per kWmonth. The provisional rates for SLCA/IP firm power in Rate Schedule SLIP–F7 will result in an overall composite rate of 20.72 mills/kWh on October 1, 2002, and will result in an increase of about 18 percent when compared with the existing SLCA/IP firm power rates under Rate Schedule SLIP–F6.

Rate Schedules SP–PTP6, SP–NW2, and SP–NFT5 supersede Rate Schedules SP–PTP5, SP–NW1, and SP–NFT4, respectively. Provisional formula rates developed for CRSP transmission services are consistent with FERC Order No. 888. Under Rate Schedules SP–PTP5 and SP–NFT4, the CRSP transmission rates are $1.78/kWmonth for firm service and a maximum of 2.43 mills/kWh for non-firm service. On October 1, 2002, the provisional formula rate in Rate Schedule SP–PTP6 results in a rate of $2.06/kWmonth for firm CRSP transmission service, a 16-percent increase when compared with the existing rate. The provisional formula rate in Rate Schedule SP–NFT5 results in a maximum rate of 2.82 mills/kWh for non-firm service, a 16-percent increase when compared with the existing rate.

The provisional formula for network integration transmission service in Rate Schedule SP–NW2 will be the same as the existing formula rate for network integration transmission service under Rate Schedule SP–NW1.

The existing transmission rates include costs for scheduling, system control, and dispatch services. The transmission provisional formula rates include the costs of this service.

Rate Schedules SP–SD2, SP–RS2, SP–EI2, SP–FR2, and SP–SSR2 supersede Rate Schedules SP–SD1, SP–RS1, SP–EI1, SP–FR1, and SP–SSR1, respectively. Ancillary services are being updated slightly to reflect minor changes.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of DOE delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985.

Pursuant to Delegation Order No. 00–037.00 and existing Department of Energy procedures for public participation in power rate adjustments at 10 CFR part 903 and 18 CFR part 300, procedures for approving Power Marketing Administration rates by FERC, Rate Order No. WAPA–99, confirming, approving, and placing the proposed SLCA/IP firm power rate, CRSP firm and non-firm transmission rates, and ancillary services rates into effect on an interim basis, is issued, and the new Rate Schedules SLIP–F7, SP–PTP6, SP–NW2, SP–NFT5, SP–SD2, SP–RS2, SP–EI2, SP–FR2, and SP–SSR2 will be promptly submitted to FERC for confirmation and approval on a final basis.

Dated: September 10, 2002.

Spencer Abraham,

Secretary.

Western Area Power Administration Rate Adjustment for the Salt Lake City Area Integrated Projects and Colorado River Storage Project; Order Confirming, Approving, and Placing the Salt Lake City Area Integrated Projects Firm Power, Colorado River Storage Project Transmission, and Ancillary Services Rates into Effect on an Interim Basis

The Western Area Power Administration (Western) developed these rates pursuant to the Department of Energy Organization Act (42 U.S.C. 7101–7352). The Department of Energy Organization Act transferred the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts specifically applicable to the projects involved, to the Secretary of Energy (Secretary).

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of DOE delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

1–CP: 1-month coincident peak for year.
12–CP: 12-month coincident peak average.
A–LP: Animas-LaPlata Project.
Administrator: Western's Administrator.
Ancillary Services: Those services necessary to support the transfer of electricity while maintaining reliable operation of the transmission system in accordance with standard utility practice.
AHP: Available Hydropower.
Basin Fund: Upper Colorado River Basin Fund.
Capacity: The electric capability of a generator, transformer, transmission circuit, or other equipment. It is expressed in kW.
Capacity Rate: The rate which sets forth the charges for capacity. It is expressed in $ per kWmonth.
CDP: Customer Displacement Power.
Collbran: Collbran Project.
Composite Rate: The rate for commercial firm power and is the total annual revenue requirement for capacity and energy divided by the total annual energy sales. It is expressed in mills/kWh and used for comparison purposes.
Contractor: An entity which has a contract with Western for SLCA/IP Firm Electric Service. (*See also* Customer)
CME: Capitalized Movable Equipment.
CROD: Contract rate of delivery. The maximum amount of capacity made available to a preference customer for a period specified under a contract.
CRSP: Colorado River Storage Project.
CRSP Act: Act of April 11, 1956, ch. 203, 70 Stat. 105, as amended, 43 U.S.C. 620–620o.
CRSP MC: The CRSP Management Center of Western.
CUP: Central Utah Project.
Customer: An entity with a contract which is receiving service from Western's CRSP MC.
DOE: United States Department of Energy.

DOE Order RA 6120.2: An order dealing with power marketing administration financial reporting and rate-making procedures.
DPR: Definite Plan Report of the CUP.
DSWR: The Desert Southwest Region of Western.
Energy: Measured in terms of the work it is capable of doing over a period of time. It is expressed in kWh.
Energy Rate: The rate which sets forth the charges for energy. It is expressed in mills/kWh and applied to each kWh delivered to each customer.
FERC: Federal Energy Regulatory Commission.
Firm: A type of product and/or service available at the time requested by the customer.
FRN: **Federal Register** notice.
FTE: Full-time equivalent. Represents one full-time employee.
FY: Fiscal year; October 1 to September 30.
GCPA: Grand Canyon Protection Act of 1992.
GWh: Gigawatthour—the electrical unit of energy that equals 1 billion watthours or 1,000,000 kWh.
Integrated Projects: The resources and revenue requirements of the Collbran, Dolores, Rio Grande, and Seedskadee projects blended together with the CRSP to create the SLCA/IP resources and rate.
kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.
kWmonth: Kilowattmonth—the electrical unit of the monthly amount of capacity.
kWh: Kilowatthour—the electrical unit of energy that equals 1,000 watts in 1 hour.
Load: The amount of electric power or energy delivered or required at any specified point(s) on a system.
Merchant Function: A Power Marketing function within the CRSP MC that balances loads and resources for the CRSP MC, other regions within Western, and customers and purchases and sells energy on the open market.
Mill: A monetary denomination of the United States that equals one tenth of a cent or one thousandth of a dollar.
Mills/kWh: Mills per kilowatthour—the unit of charge for energy.
MW: Megawatt—the electrical unit of capacity that equals 1 million watts or 1,000 kilowatts.
NEPA: National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).
Net Revenue: Revenue remaining after paying all annual expenses.
Non-firm: A type of product and/or service not always available at the time requested by the customer.
O&M: Operation and maintenance.
OASIS: Open Access Same-Time Information System—provides access to information on transmission pricing and availability for potential transmission customers.
OM&R: Operation, Maintenance & Replacement.
PAR: Purchase Adder Rate.
Participating Projects: The Dolores and Seedskadee projects participating with CRSP according to the CRSP Act of 1956.
Power: Capacity and energy.
Project Use: Power used to operate SLCA/IP and CRSP facilities pursuant to Reclamation Law.
Provisional Rate: A rate which has been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary of DOE.
PRS: Power repayment study.
Rate Brochure: A document explaining the rationale and background of the rate proposal contained in this Rate Order dated February 2002.
Rate-Setting PRS: The PRS used for the rate adjustment proposal.
Reclamation: United States Department of the Interior, Bureau of Reclamation.
Reclamation Law: A series of Federal laws. Viewed as a whole, these laws create the originating framework under which Western markets power.
Revenue Requirement: The revenue required to recover annual expenses, such as O&M, purchase power, transmission service expenses, interest, deferred expenses, and repayment of Federal investments, and other assigned costs.
RIP: Recovery Implementation Program.
RMR: The Rocky Mountain Region of Western.
Secretary: Secretary of Energy.
SCADA: Supervisory Control and Data Acquisition.
SHP: Sustainable Hydro Power.
SLCA/IP: Salt Lake City Area Integrated Projects—The resources and revenue requirements of the Collbran, Dolores, Rio Grande, and Seedskadee projects blended together with the CRSP to create the SLCA/IP resources and rate.
Supporting Documentation: A compilation of data and documents that support the Rate Brochure and the rate proposal.
WACM: Western Area Colorado Missouri control area, operated by RMR.
WALC: Western Area Lower Colorado control area, operated by DSWR.
Western: United States Department of Energy, Western Area Power Administration.
Western Regions: Customer service regions of Western Area Power Administration.
Western's Tariff: Western's Open Access Transmission Service Tariff.
Work Plan: A draft estimate of costs that are expected to become the Congressional Budget for Western and Reclamation.
WRP: Western Replacement Power.
WECC: Western Electricity Coordinating Council.
WSPP: Western Systems Power Pool.

Effective Date

The new interim rates will take effect on the first day of the first full billing period beginning on or after October 1, 2002, and will be in effect pending their approval by FERC or substitute final rates for 5 years ending September 30, 2007, or until superseded.

Public Notice and Comment

Western followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, in developing these rates. The steps Western took to ensure involvement of interested parties in the rate process were:

1. The proposed rate adjustment process began September 18, 2001, when Western mailed a notice announcing informal customer meetings to all SLCA/IP customers and interested parties.

2. Western mailed a notice on October 3, 2001, announcing the change of dates and locations for informal customer meetings to one meeting. The meeting was held on October 18, 2001, in Salt Lake City, Utah. At this informal meeting, Western explained the rationale for the rate adjustment, presented rate designs and methodologies, and answered questions.

3. On March 4, 2002, Western's CRSP MC mailed letters to all SLCA/IP preference customers and interested parties transmitting the Brochure for Proposed Rates and the **Federal Register** notice due to be published on March 6, 2002.

4. A **Federal Register** notice published on March 6, 2002 (67 FR 10189), officially announced the proposed rates for SLCA/IP and CRSP, began a public consultation and comment period, and announced the public information and public comment forums.

5. On March 19, 2002, beginning at 10 a.m., Western held a public information forum at the Hilton Salt Lake City Center in Salt Lake City, Utah. Western provided detailed explanations of the proposed rates for SLCA/IP and CRSP, provided a list of issues that could change the proposed rates, answered questions, and gave notice that additional information would be provided at a second information forum

before the public comment forum. Rate Brochures, Supporting Documentation, and informational handouts were also provided.

6. On April 12, 2002, Western's CRSP MC mailed letters to all SLCA/IP preference customers and interested parties notifying them of the second public information forum and providing a table which illustrated the proposed changes to be discussed.

7. On April 23, 2002, beginning at 10 a.m., Western held a second public information forum at the Hilton Salt Lake City Center in Salt Lake City, Utah. Western provided updates to the proposed firm power rates, and answered questions.

8. On April 23, 2002, beginning at 11:15 a.m., Western held a comment forum to give the public an opportunity to comment for the record. Seven individuals commented at this forum.

9. Western received 21 comment letters during the consultation and comment period, which ended June 4, 2002. All formally submitted comments have been considered in preparing this Rate Order.

Comments

Written comments were received from the following organizations:

Bureau of Reclamation, Upper Colorado Region, Utah
Bountiful City Light and Power, Utah
Bridger Valley Electric Association, Wyoming
City of Farmington, New Mexico
Colorado River Energy Distributors Association, Arizona
Deseret Power Electric Cooperative, Utah
Dixie-Escalante Electric Cooperative, Utah
Fillmore City, Utah
Holden Town, Utah
Holy Cross Energy, Inc., Colorado
Irrigation & Electrical Districts Association of Arizona, Arizona
Kanosh Town, Utah
Kaysville City, Utah
Morgan City, Utah
Murray City Corporation, Utah
Platte River Power Authority, Colorado
Provo City Power, Utah
Salt River Project, Arizona
Strawberry Electric Service District, Utah
Tri-State Generation and Transmission Association, Inc., Colorado
Utah Associated Municipal Power Systems, Utah

Representatives of the following organizations made oral comments:

Colorado River Energy Distributors Association, Arizona
Deseret Power Electric Cooperative, Utah
Irrigation & Electrical District Association, Arizona
Manti City Power, Utah
Nephi City Power, Utah
Utah Municipal Power Association, Utah

Project Description

The SLCA/IP consists of the CRSP, Rio Grande, and Collbran projects. The CRSP described here includes two CRSP participating projects that have power facilities, the Dolores and Seedskadee projects. The Rio Grande and Collbran projects were integrated with CRSP for marketing and rate-making purposes on October 1, 1987. The goals of integration were to increase marketable resources and to simplify contract and rate development and project administration by creating one rate and assuring repayment of the Projects' costs. All Integrated Projects maintain their individual identities for financial accounting and repayment purposes, but their revenue requirements are integrated into one PRS for rate-making, known as the SLCA/IP.

Power Repayment Study—Firm Power Rate

Western prepares a PRS each FY to determine if revenues will be sufficient to repay, within the prescribed time periods, all costs assigned to the SLCA/IP revenues. Repayment criteria are based on law, policies including DOE Order RA 6120.2, and authorizing legislation.

The proposed rates for SLCA/IP firm power result in an overall composite rate increase of approximately 18 percent on October 1, 2002, when compared to the existing SLCA/IP firm power rates in Rate Schedule SLIP–F6. The composite rate under Rate Schedule SLIP–F6 is 17.57 mills/kWh, and the proposed composite rate is 20.72 mills/kWh. The following table compares the current and proposed firm power rates.

COMPARISON OF CURRENT AND PROPOSED FIRM POWER RATES

Rate schedule	Current rate	Proposed rate	Increase
	SLIP–F6	SLIP–F7	
Energy (mills/kWh)	8.1	9.5	1.4
Capacity ($/kWmonth)	3.44	4.04	.60
Composite Rate: (mills/kWh)	17.57	20.72	3.15

CRSP Transmission Rate Study

A transmission service rate study was prepared to ensure that transmission service rates are based on the cost of service of the CRSP transmission system. This study includes all transmission expenses and associated offsetting revenues. Transmission service rates are charged separately to entities receiving transmission-only services over the CRSP transmission system.

Western is proposing firm and non-firm transmission rate formulas to annually calculate rates applicable to all current and future CRSP transmission service. The current firm and non-firm CRSP transmission rate formulas became effective on April 1, 1998. The proposed transmission rate formulas are expected to be effective October 1, 2002, through September 30, 2007. These rate formulas include costs for scheduling, system control, and dispatch service. The cost of transmission service for Western's SLCA/IP long-term firm electric service will continue to be included in the SLCA/IP firm power rate. Transmission services are outlined in Western's Tariff.

A new rate methodology is being proposed that is more consistent with the methodology used at other Western regions and other utilities. The proposed methodology is an annual fixed charge formula that will be used to determine the revenue requirement to be recovered from firm and non-firm transmission service. The annual transmission revenue requirement includes O&M expenses, administrative and general expenses, interest expense, and depreciation expense. This methodology is updated annually using the most recent historical test year. This revenue requirement is offset by appropriate CRSP transmission system revenues.

The provisional rate for non-firm CRSP transmission service is based upon the current CRSP firm point-to-point transmission rate, and may be discounted. The provisional rate is expressed in mills/kWh and is a maximum of 2.82 mills/kWh for FY 2003.

The provisional rate for network integration transmission service is a formula calculation based on the annual transmission revenue requirement. There are no changes to the existing network integration transmission service formula under Rate Schedule SP–NW1.

Firm Point-to-Point

The CRSP MC is seeking approval of a rate formula for calculation of the firm point-to-point transmission rate, to be applied annually. The provisional rate for firm point-to-point CRSP transmission service is $2.06 per kWmonth for FY 2003, a 16-percent increase from the existing firm transmission rate of $1.78 per kWmonth, which became effective April 1, 2002.

The firm point-to-point transmission rate is based on a test year using an annual fixed charge methodology. This test year is the most recent historical data available. The annual transmission revenue requirement is reduced by revenue credits such as non-firm transmission, existing contracts at different rates, scheduling and dispatch services, and phase shifter revenues. The resultant net annual transmission revenue requirement is divided by the capacity reservation needed to meet firm power and transmission-only commitments in kW, including the total network integration loads at system peak, to derive a cost/kWyear. The formula is updated each year by applying the most current historical test year. If needed, a revised rate will become effective each October 1. The rate formula is proposed to be effective October 1, 2002, through September 30, 2007.

The cost/kWyear is calculated using the following formula:

1. $ARR - TRC = NARR$

2. $\frac{NARR}{TSTL}$

Where:

ARR = Annual Revenue Requirement. The costs associated with facilities that support the transfer capability of the CRSP transmission system, excluding generation facilities. These costs include investment costs, interest expense, depreciation expense, administrative and general expenses, and operation and maintenance expense, including transmission purchases. Transmission purchases reflect those costs associated with CRSP contractual rights.

TRC = Transmission Revenue Credits. The revenues generated by the CRSP transmission system not related to the revenues from the sale of long-term firm transmission.

NARR = Net Annual Transmission Revenue Requirement. The Annual Revenue Requirement minus Transmission Revenue Credits.

TSTL = CRSP Transmission System Total Load. The sum of the total CRSP transmission capacity under long-term reservation including the total network integration loads at system peak.

Non-Firm Point-to-Point

The proposed rate for non-firm point-to-point CRSP transmission service is a mills/kWh rate which is based upon the current firm point-to-point rate and may be discounted. This rate will remain in effect concurrently with the firm point-to-point rate and will also be reviewed annually. Transmission availability will be posted on Western's OASIS.

Network

The proposed rate for network transmission is a formula calculation based upon the annual revenue requirement then in effect, as determined by the annual fixed charge methodology. Western is not currently providing network transmission on its CRSP transmission system.

Ancillary Services

Six ancillary services will be offered by CRSP MC, two of which are required. These are (1) scheduling, system control, and dispatch service and (2) reactive supply and voltage control service. The remaining four ancillary services, (3) regulation and frequency response service, (4) energy imbalance service, (5) spinning reserve service, and (6) supplemental reserve service, will also be offered either from the control area or from the CRSP Merchant Function. Sales of regulation and frequency response, energy imbalance, spinning reserve, and supplemental reserve services from SLCA/IP power resources are limited since Western has allocated the SLCA/IP power resources to preference entities under long-term commitments. The availability and type of ancillary service will be determined based on excess resources available at the time the service is requested, except for the two ancillary services required to be provided in conjunction with the sale of CRSP transmission services.

Since the CRSP transmission system lies in two control areas operated by Western's RMR and DSWR, many of the ancillary services are offered through their respective control areas.

The provisional rates for ancillary services are designed to recover only the costs associated with providing the service(s). The costs for providing scheduling, system control, and dispatch service are included in the appropriate provisional transmission services rates. However, the charges for reactive supply and voltage control service will be in accordance with Western's DSWR and RMR applicable rate schedules.

Existing and Provisional Rates

A comparison of the existing and provisional firm power, transmission and ancillary services rates follows:

COMPARISON OF EXISTING AND PROVISIONAL SALT LAKE CITY AREA/INTEGRATED PROJECTS FIRM POWER, COLORADO RIVER STORAGE PROJECT TRANSMISSION AND ANCILLARY SERVICES

	Existing rates	Provisional rates (effective 10/1/02)	% Change
Firm Capacity Charge ($/kWmonth)	$3.44	$4.04	17
Firm Energy Charge (mills/kWh)	8.10	9.50	17
Composite Rate (mills/kWh)	17.57	20.72	18
Firm Transmission Rate ($/kWmonth)	1.78	2.06	16
Network Transmission (Net Annual Revenue Requirement)	54,968,215	65,279,468	19
Non-firm Transmission Rate	2.43 mills/kWh, may be discounted.	2.82 mills/kWh, may be discounted.	16

COMPARISON OF EXISTING AND PROVISIONAL SALT LAKE CITY AREA/INTEGRATED PROJECTS FIRM POWER, COLORADO RIVER STORAGE PROJECT TRANSMISSION AND ANCILLARY SERVICES—Continued

	Existing rates	Provisional rates (effective 10/1/02)	% Change
Ancillary Services [1]	N/A	N/A	N/A

[1] Since most of CRSP transmission facilities are located in two other Western control areas, many of these services are provided through these control areas.

Certification of Rates

Western's Administrator certified that the interim rates for SLCA/IP firm power, CRSP transmission, and ancillary services are the lowest possible rates consistent with sound business principles. The provisional rates were developed following administrative policies and applicable laws.

SLCA/IP Firm Power Rate Discussion

According to Reclamation law, Western must establish power rates sufficient to recover operation, maintenance, and purchased power expenses, interest expenses, and repayment of investment and irrigation aid.

The SLCA/IP firm power rate needs to be increased due to recent higher-than-expected O&M and purchased power costs that have occurred since the existing rate was established. Future projections for O&M have also increased in the Rate-Setting PRS. It is also expected that near term hydrogeneration will be lower than normal in the next 2 years which will require greater than normal purchased power costs.

These higher-than-expected O&M and purchased power costs have created deficits or near-deficits within the CRSP PRS since 1999. These deficit or near-deficit conditions are expected to continue through 2004. The deficits are projected to be repaid by 2005.

The increased revenue requirements are partially offset by an increase in projections for offsetting revenues such as Merchant Function, non-firm transmission, and ancillary services revenues.

The existing rate for SLCA/IP firm power under Rate Schedule SLIP–F6 expires March 30, 2003. Effective October 1, 2002, Rate Schedule SLIP–F6 will be superseded by the new rates in Rate Schedule SLIP–F7. The provisional rates for SLCA/IP firm power consist of a capacity rate and an energy rate. The provisional capacity rate is $4.04/kWmonth, and the provisional energy rate is 9.5 mills/kWh.

Statement of Revenue and Related Expenses

The following table provides a summary of projected revenue and expense data for the SLCA/IP firm power rate through the 5-year provisional rate approval period.

SLCA/IP FIRM POWER COMPARISON OF 5-YEAR RATE PERIOD (FY 2003–FY 2007) TOTAL REVENUES AND EXPENSES

	Existing rate ($000)	Proposed rate ($000)	Difference ($000)
Total Revenues	$636,189	$772,317	$136,128
Revenue Distribution:			
Annual expenses			
O&M	176,600	286,644	110,044
Purchased Power and Wheeling	59,375	131,926	72,551
Integrated Projects Requirements	42,331	43,335	1,004
Interest	60,442	174,765	114,323
Other	9,428	31,323	21,895
Total annual expenses	348,176	667,993	319,817
Annual principal payments			
Capitalized Expenses	0	19,257	19,257
Original Project and Additions [1]	158,654	79,941	(78,713)
Replacements [1]	127,117	2,810	(124,307)
Irrigation	2,242	2,316	74
Total principal payments	288,013	104,324	(207,316)
Total Revenue Distribution	636,189	772,317	136,128

[1] Due to the deficit or near-deficit conditions between 1999 and 2004, revenues generated in the cost evaluation period are applied towards repayment of deficits rather than repayment of project, additions, and replacements. All deficits are projected to be repaid by 2005.

Basis for Rate Development

The existing rates for SLCA/IP firm power in Rate Schedule SLIP-F6 expire March 30, 2003. The existing rates no longer provides sufficient revenues to pay all annual costs, including interest expense, and repayment of investment and irrigation aid within the allowable period. The adjusted rates reflect increases primarily in O&M costs, purchase power costs, and interest expenses. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of investment and irrigation aid within the allowable periods. The provisional rates will take effect on October 1, 2002, to correspond with the start of the Federal fiscal year, and will remain in effect through September 30, 2007.

The provisions for transformer losses adjustment, power factor adjustment, Western Replacement Power adjustment, and Customer Displacement Power administrative charges adjustment are part of the provisional

rates for SLCA/IP firm power. The provisions and methodologies for these adjustments are not being modified and will remain as specified in SLIP–F6.

Comments

The comments and responses regarding the firm power rate, paraphrased for brevity when not affecting the meaning of the statement(s), are discussed below. Direct quotes from comment letters are used for clarification where necessary.

The issues discussed are (1) Purchase Adder Rate (PAR), (2) Purchase Power, (3) O&M, (4) Central Utah Project (CUP), (5) status of issues which were identified as outstanding in the Rate Brochure, (6) Merchant Function Revenues, (7) Basin Fund, and (8) miscellaneous comments.

1. PAR

Comment: Because of the potential volatility and magnitude of the PAR, a majority of the comment letters received by the CRSP MC suggested that Western eliminate the PAR and put purchase power costs back into the PRS and include the costs in the firm power rate.

Response: In its March 6, 2002, proposal, at the request of some firm power customers, Western removed all purchase power costs from the PRS and included the near-term purchase power costs in a PAR. The PAR was initially calculated at 2.6 mills/kWh. At its second Public Information Forum on April 23, 2002, the CRSP MC provided a revised calculation of the PAR at 5.1 mills/kWh. This revision reflected updated reservoir conditions which resulted in increased purchased power needs for the next 2 years. The PAR would be subject to further revisions, depending upon hydrological projections at the time of the rate order submission.

The CRSP MC received an overwhelming number of comments and concerns expressed by the customers concerning the PAR. The CRSP MC has made the decision to eliminate the PAR and include purchase power expenses in the Rate-Setting PRS when calculating the firm power rate. Western has not included additional comments received regarding the PAR calculation since it has determined to eliminate the PAR.

2. Purchase Power

A. *Comment:* Customers suggest that Western reconsider its approach in determining purchase power costs for the PRS, at least in the early years, to recognize the near-term hydrology, depleted reservoirs, and Western's commitment to deliver all energy in excess of SHP to its customers at the firm power rate. Customers further recommend that Western determine purchase power projections in a manner similar to that under Rate Schedule SLIP-F6 (current rate schedule). Customers recommend that Western determine rates consistent with its historical methodologies. The customers also desire to work with Western to determine the adequate amount of purchases that should be included in the rate-setting PRS.

Response: The CRSP MC recognizes the current dry hydrological conditions and subsequent depleted reservoirs and has attempted to reflect this in the purchase power estimates. The near-term purchases are based on Reclamation's 24-month hydrological study for FY's 2003 and 2004 and average hydrology for the remainder of the rate-setting years.

B. *Comment:* Several customers suggest Western use average hydrology to project purchase power in the PRS. Customers believe this conforms to the Post-1989 Marketing Criteria and is consistent with historic and current treatment in the PRS. In particular, some customers also commented on the May 2, 2002, data provided regarding average hydrology, which indicated purchases of $42 million in FY 2002 and no purchases in FY 2004 through 2007 to support their position on the use of hydrology.

Response: The CRSP MC has used Reclamation's 24-month hydrological study for projecting purchase power costs in FY's 2003 and 2004. Beyond those years, the CRSP MC used average hydrology in projecting purchase power costs in the long-term.

The data provided May 2, 2002, was an estimate developed for discussion purposes only. The CRSP MC further updated its analysis of average hydrology, which indicates purchases are needed throughout the Rate-Setting PRS.

C. *Comment:* To the extent it is allowed by law and regulation, a customer recommended that Western use physical as well as financial risk mitigation methods to minimize the rate risk. As part of this, customers suggest that Western, to the extent it is not prohibited by law and/or regulation, evaluate using hydro availability hedges.

Response: Western is open to considering such possibilities which would limit its risk. Western does have Federal laws, regulations, etc., that need to be taken into consideration, depending on the details of customer suggestions.

D. *Comment:* A customer suggests that Western use an 11 percent loss factor at Glen Canyon when determining energy available for purchase power projections.

Response: The purchase power projections reflect an 11 percent loss factor at Glen Canyon and 5.5 percent at other SLCA/IP generating units. Assuming that 70 percent of SLCA/IP generation comes from Glen Canyon Power Plant, the average loss factor applied is 9.35 percent.

E. *Comment:* Western received a small number of comments regarding various alternatives for assessing purchase power costs. These proposals include: (1) Western should allow its preference power customers to make a decision to temporarily reduce their SHP entitlements, (2) Western should develop rate-based alternatives such as a ''slice of the system,'' possibly under conditions of low hydrology or high purchase power expense, and (3) Western should provide a more flexible situation where additional firming purchases are a customer decision, rather than solely Western's. A customer wants assurance that the revised rate will provide for delivery of full SHP.

Response: Based on the large number of comments Western received suggesting that it should not implement a PAR and include purchased power costs in the firm power rate, Western has decided to include purchases in the Rate-Setting PRS in developing the firm energy and capacity rates. On October 1, 2002, Western expects to begin providing the contractually obligated capacity and energy as provided for under the Post-1989 Marketing Plan and what is commonly referred to as Contract Amendment No. 4.

3. O&M

A. *Comment:* Customers support inclusion of Western's FY 2004 Work Plan O&M budgets, but believe it is premature to include Reclamation's FY 2004 Work Plan O&M budgets.

Response: Based on customers' requests, Western included its FY 2004 Work Plan in the Rate-Setting PRS. For consistency purposes, Western believes that it is appropriate to also include Reclamation's FY 2004 Work Plan. Western believes that both agency Work Plan documents are in similar stages of development, and have been made available for customer review.

B. *Comment:* A customer is concerned that CRSP is only reducing by 5 percent its budget request for FY 2003, rather than the 10 percent the other Western regions appear to be receiving in FY 2003.

Response: The DOE, in an effort to shift its priorities more toward domestic security, has asked agencies such as Western to reduce FTE and thereby appropriations. Other budget items such as operation, maintenance, replacements, and emergency expenditures, were not reduced; therefore, the overall CRSP reduction was 5 percent.

C. *Comment:* Customers suggest that Western and Reclamation further review the OM&R and capital costs for FY 2003 and FY 2004 and aggressively pursue opportunities to reduce or defer costs beyond the rate-setting window.

Response: Western will continue to pursue cost reduction opportunities; however, it must also satisfy the need to provide a reliable system. Western believes that the Work Program Review process that it conducts with its customers has been beneficial in reducing both Reclamation and Western's O&M.

D. *Comment:* A customer wants to know how the allocation from other Western Regions impacted the budget projections after Transformation.

Response: Overall costs decreased following Transformation as Western reduced FTE, with a major reduction coming from CRSP.

As part of the reorganization, most of the O&M functions of the CRSP MC were moved to Western's RMR and DSWR. There were some costs in the other Western Regions that were appropriate to be allocated to CRSP that had not been anticipated in the FY 1998 budget, which the existing firm power rate is based upon. An example of this is the allocation to CRSP for a portion of a region's facility costs and capitalized SCADA costs.

E. *Comment:* A customer wants an explanation of the significant increase in costs of the Reclamation offices. As part of this, the customer wants to know what power program services costs became allocated to power.

Response: In the proposed rate, Reclamation has allocated costs associated with CRSP O&M costs of Upper Colorado River Basin offices to power based on their allocated, multipurpose, cost-share percentages. These percentages are described in the Reclamation Report on Allocation of Costs for the Colorado River Storage Project, dated December 1974. Reclamation's offices allocate O&M costs to various projects, such as CRSP. The costs that are directly charged to CRSP are further allocated to various purposes, such as power. The following provides power's percentage share of these that are charged to CRSP:

Ninety-two percent of the charges to CRSP from the Regional Office in Salt Lake City, Utah, are included in the Rate-Setting PRS. The Regional Office operates the mainstream reservoirs, including forecasting flow recommendations, coordination of conflicting multiple uses, and meeting legal requirements.

Ninety percent of the charges to CRSP from the Provo Office in Provo, Utah, are included in the Rate-Setting PRS. The Provo Office provides assistance associated with the operation of Flaming Gorge Dam including coordination of release requirements.

Ninety-seven percent of the charges to CRSP from the Grand Junction Office in Grand Junction, Colorado, are included in the Rate-Setting PRS. This office provides assistance on water operations and O&M activities for the Curecanti Unit.

Ninety-seven percent of the charges to CRSP from the Denver Power Office in Denver, Colorado, are included in the Rate-Setting PRS. The Denver Power Office provides support with the Power Program Services Division and O&M support of CRSP facilities.

Although the allocated share of CRSP costs allocated to power in these offices is between 90 and 100 percent, this amounts to only a small share of the total costs incurred by these offices for all of their project needs. For example, 5.6 percent of the Regional Office cost is a direct charge to the CRSP Project. Of those costs, 92 percent is allocated to power.

F. *Comment:* Customers request that Western not include the budgets for the proposed A-LP transmission line and switchyard. Customers encourage Western to consider potential rate impacts prior to including new projects in its work plans.

Response: The total budgeted costs for the proposed transmission line and switchyard are approximately $6 million from FY 2002 through FY 2006. This has a .07 mills/kWh impact on the firm power rate. Western will continue to include these costs in the Rate-Setting PRS as long as these costs are reflected in its budgets.

G. *Comment:* Customers suggest Western consider the potential outcome of legislation on the treatment of Federal Civil Service Retirement System (CSRS) costs and remove those costs from the PRS.

Response: The DOE General Counsel stated by memorandum dated July 1, 1998, the Power Marketing Administrations (PMAs) have the authority to collect, through the rates, the full costs of the retirement benefits. In addition, FERC has issued numerous orders approving the inclusion of such costs in PMA rates: Western Area Power Administration (Boulder Canyon Project), 96 FERC ¶ 61,171 (2001), Western Area Power Administration (Central Valley Project), 96 FERC ¶ 62,150 (2001), Southeastern Power Administration, 91 FERC ¶ 61,272 (2000), Western Area Power Administration (Intertie Project), 87 FERC ¶ 61,346 (1999), and Southeastern Power Administration, 86 FERC ¶ 61,195 (1999). Therefore, Western believes it should continue to include these costs in the Rate-Setting PRS.

If pending legislation addressing Federal retirement and health benefit costs is enacted into law, Western will assess the impact of that law on its decision to include these costs in the Rate-Setting PRS.

H. *Comment:* A customer wants to understand how the Western Electricity Coordinating Council (WECC) dues are broken out by the various projects.

Response: WECC assesses dues by control area and the amount of load in the control area. Western Area Colorado Missouri (WACM) and Western Area Lower Colorado (WALC) control areas both receive an assessment from WECC, and CRSP has loads in both control areas. The control areas break down the recovery by loads and bill the loads directly for their portion of the bill, based on their proportional share of the load. For firm electric service, Western pays for that portion of the load at each Federal delivery point, and the remainder is recovered through billing the load directly.

I. *Comment:* Customers request that Western not include the Common Electronic Scheduling System budgeted for in its FY 2004 Work Plan. Customers believe that these items should not be included in the PRS until the operational benefits associated with the investment are quantified.

Response: The Common Electronic Scheduling System costs are not included in the projected revenue requirement. Once Western purchases the system, the costs will be added to the CRSP CME. Then, depreciation charges are assessed against the total amount of CRSP CME. The sum of the depreciation charges is recorded annually in the PRS as an O&M expense. The Rate-Setting PRS projects CME depreciation costs based upon historical charges.

J. *Comment:* Several customers suggest that Western make security costs non-reimbursable as has the Department of the Interior.

Response: Western recognizes that Reclamation has made a determination that the security expenses funded by

Public Law 107–117, ''for emergency expenses to respond to the September 11, 2001, terrorist attacks,'' are to be considered non-reimbursable. Western has not received any appropriations to respond to post-September 11 security concerns. If Western does, it will make a determination at that time regarding the reimbursability of the expenses.

4. CUP

A. *Comment:* Customers support Western and Reclamation's agreement not to include certain CUP costs within the PRS, which resulted in approximately 2 mills/kWh savings. Several customers request that Western eliminate the CUP irrigation repayment costs from the PRS. Customers suggest that Western does not need to proceed with a rate adjustment at this time. Customers believe that there is significant ''cushion'' in the PRS due to an expected change in the CUP purposes from agricultural to municipal and industrial uses, which the customers believe will cause a major reduction in the CRSP rate. Customers believe that the CUP is the ''driver'' of the apportionment. Customers encourage timely completion of the revised DPR and cost allocations.

Response: There are $149.8 million of costs attributable to completion of the Bonneville Unit that have not met the criteria set forth by a 1983 agreement between Reclamation and Western and, therefore, are not included in the SLCA/IP firm power rate base. In FY 2001, $34.7 million of these costs met the 1983 agreement criteria which allows for these construction dollars to be included in the Rate-Setting PRS. However, these costs were not included, because of the potential change in the revised draft DPR and cost allocations. In December 2001, Western and Reclamation signed an agreement with the CUP Completion Act Office that the amount ($536.6 million) that was currently in the Rate-Setting PRS for the Bonneville Unit not be revised until the CUP Completion Act Office approves a draft supplement to the 1988 DPR.

It is expected that this draft supplement will be available in late FY 2003. At that time, Western, Reclamation, and the CUP Completion Act Office will discuss the implications of the change in the irrigation costs to be repaid by the power users. It is unknown what the rate impact of the draft supplement will be on the firm power rate. Until a draft supplement is completed, Western will continue to include the CUP irrigation repayment costs in the Rate-Setting PRS in accordance with the agreement between Western and Reclamation.

B. *Comment:* A customer wants to know why 10 years is being used for the Bonneville Unit power investigation costs amortization period. Several customers request that Western remove from the PRS the $12.6 million of ''sunk'' power investigation costs for the Bonneville Unit of the CUP. A customer argues that these costs should not be included in accordance with RA 6120.2, which states that expenditures booked to construction accounts become part of the rate analysis when the asset is placed in service. Customers cite the pending Federal legislation to make these costs non-reimbursable as cause to exclude these costs from the PRS.

Response: The Rate-Setting PRS amortizes these costs over a 10-year period without interest. Western's independent auditors suggested using a 10-year period because it lessened the impact to the customers as opposed to expensing this amount in a single year. Western believes that the $12.6 million, which is without interest during construction or interest in investment expenses, of power investigation costs should not be recognized as construction costs. Rather, these costs are considered investigation costs and not construction costs and, therefore, need to be recovered. Western is aware of the pending Federal legislation that potentially changes these costs to a non-reimbursable treatment. If this legislation is passed, Western will remove these costs from the financial statements and the PRS.

5. Outstanding Issues

A. *Comment:* A customer requests that the pending issues of reconstructing CRSP investments, accounting for system losses, deferred costs of the Bonneville unit completion and the A-LP, and Glen Canyon cost allocations under the GCPA be resolved and reflected in the rate as much as possible.

Response: The CRSP MC will continue to work on resolving these outstanding issues. Once the issues are resolved, the CRSP MC will reflect its resolution in the PRS. None are expected to have a major impact on the firm power rate. In accordance with RA 6120.2, Western will continue to perform yearly PRSs to determine if the rate is sufficient to meet all required payments.

B. *Comment:* Customers recognize that the outstanding issue of ''CRSP Reconstruction of Investment'' is internal to Western and request that the scenario that Western believes will most likely occur be included in the PRS.

Response: At the time of this rate order, Western is uncertain of the final resolution of this issue. There remains an amount of internal review regarding this issue. Therefore, the CRSP MC believes it is premature to speculate as to the likelihood or the extent of the potential resolution in the Rate-Setting PRS. Western will include the final determination in the PRS once a decision is made and the dollar amount is recorded in the audited financial statements.

C. *Comment:* A customer wants to know the status of the determination of non-reimbursability of Aspinall and Flaming Gorge studies which are budgeted by Reclamation.

Response: Flaming Gorge and Aspinall studies associated with the RIP are considered non-reimbursable. Costs associated with preparing an Environmental Impact Statement at Flaming Gorge, Aspinall, and Navajo have been determined by Reclamation to be partially non-reimbursable. Reclamation will continue to evaluate the costs of environmental studies at Aspinall, Flaming Gorge, and Navajo to determine if there is any justification to change the status of all of these expenses to non-reimbursable.

6. Merchant Function Revenues

A. *Comment:* Customers expressed concern over the revision which decreased the Merchant Function revenue projection. A customer recognizes the aberration the 2001 data caused to the Merchant Function revenues. A customer believes that Western should go back to the original estimate of non-firm transmission and Merchant Function revenues.

Response: Because the historical data for Merchant Function and non-firm transmission revenues is quite volatile, Western chose to use a 5-year average of these revenues instead of the 3-year average initially proposed. Currently, in FY 2002, CRSP is experiencing a drastic reduction in Merchant Function and non-firm transmission revenues. The CRSP MC believes that placing too much emphasis on historic revenues stemming from volatile conditions that occurred in FYs 2000 and 2001 might be overstating future revenues for rate-making purposes. The FY 2002 projection is based on actual data through 2002.

B. *Comment:* Customers support Western's recalculation of non-firm transmission and Merchant Function revenue projections as being a reasonable approach.

Response: Western believes that the recalculation of both non-firm transmission and Merchant Function revenues based on 5 years of historical data instead of the 3 years originally

proposed is a better estimate of future revenues.

C. *Comment:* A customer questions if Merchant Function revenue includes sales of AHP at current rate.

Response: Merchant Function revenues include revenue from purchases for resale activities and from transaction fees. These do not include any AHP revenues either historically or in the projection. Revenues from AHP sales are included historically as part of firm power sales revenues and are netted against future purchases.

D. *Comment:* A customer questions the costs of the Merchant Function activities on an annual basis. Customers question profitability and the viability of this function. A customer believes Merchant Function revenues should be increasing due to increased Merchant Function staff.

Response: Western believes that the $5.5 million of annual revenues forecasted more than offset the costs of this function. The activities solely related to the Merchant Function are approximately $1.3 million yearly. These costs include labor, programming support, computer costs, and building expenses. These are offset by transaction fee charges and by purchases-for-resale activities. The transaction fees are updated each FY to ensure recovery of Merchant Function activities performed for others.

7. Basin Fund

A. *Comment:* A customer suggests that Western devote more staff and attention to plan for and regularly update its cash reserve requirements, so customers and Western are not faced with Basin Fund cash flow concerns in the future. Customers encourage Western to maintain a reasonable Basin Fund level to accomplish project purposes and to work with its customers to maintain options to address Basin Fund cash flow constraints.

Response: Due to market volatility, recent drought conditions, and environmental test flows, the Basin Fund has been severely depleted of its available cash. As a result, the CRSP MC worked closely with its customers to find alternative solutions to remedy this situation. The CRSP MC is fully devoted and attentive to the cash balance in the Basin Fund and routinely performs cash flow analysis to help ensure the solvency of the Basin Fund. As part of the fiscal year end process, Western works in consultation with its customers and Reclamation in determining the appropriate level of cash balance for the following fiscal year. Western is obligated, under the CRSP Act, to annually return revenues in the Basin Fund in excess of operating needs to the General Fund of the Treasury.

B. *Comment:* A customer expressed concern that the CRSP MC's management of a collaborative process is flawed. A customer cites example of customer's assistance in receiving a ''slice'' to help build the Basin Fund level to reasonable levels. This customer is concerned that now that the Basin Fund level is at a reasonable level, Western is proposing to return to providing the full contract commitment and will no longer continue providing a ''slice,'' even at customers' requests.

Response: The CRSP MC believes in the benefits of a collaborative process. Unfortunately, it is not always able to achieve an optimal resolution for Western and its customers.

C. *Comment:* Customers encourage Western to consider other options to alleviate immediate cash flow pressures. Customers have significant concern about the impacts to Basin Fund cash flows resulting from non-reimbursable expenses, primarily associated with environmental programs.

Response: Western continues to be open to options which assist in alleviating cash flow constraints. When the Basin Fund provides for non-reimbursable expenses, it reduces the amount of cash available for other expenditures within the Basin Fund. The non-reimbursable costs are primarily a result of environmental programs under the GCPA and the RIP.

Section 1807 of the GCPA, states that: ''The Secretary is authorized to use funds received from the sale of electric power and energy from the Colorado River Storage Project to prepare the environmental impact statement, described in Section 1804, including supporting studies, and the long-term monitoring programs and activities described in Section 1805. Except, funds will be treated as having been repaid and returned to the General Fund of the Treasury as costs assigned to power for repayment under Section 5 of the CRSP Act.'' This legislation allows for, but does not mandate, the use of power revenues for these purposes. Western has informed the Adaptive Management Work Group that should funds not be available to conduct an experiment, Western will work with Reclamation and others to obtain alternative sources of funds.

The Recovery Implementation Program legislation, Pub. L. 106–392, Section 3(d)(3)(2) provides that: ''If Western Area Power Administration and the Bureau of Reclamation determine that the funds in the Colorado River Basin Fund will not be sufficient to meet the obligations of section 5(c)(1) of the Colorado River Storage Project Act for a 3-year period, the Western Area Power Administration and the Bureau of Reclamation shall request appropriations to meet base funding obligations.'' This legislation provides Western with more flexibility in funding those costs. Western will notify Reclamation that alternative funding sources should be sought if Basin Fund projections indicate it to be insufficient.

D. *Comment:* A customer is opposed to the use of the PAR as the method to increase the level of the Basin Fund.

Response: The PAR was proposed to recover the cost of near-term purchase power costs only and was not designed to increase the level of the Basin Fund. The ''true-up'' component of the PAR formula was developed to ensure that firm power customers only paid for their actual purchased power costs.

E. *Comment:* Several customers expressed concern over the reduction in resources available at the firm power rate as a result of the reduced Basin Fund balance which was largely drawn down by environmental programs, below average hydrology, and high market prices for purchase power. Customers suggested this reduction in resources be taken into account when setting a new rate so that CRSP costs are not further exacerbated.

Response: Due to market volatility, recent drought conditions, and environmental test flows, the Basin Fund was severely depleted of its available cash. The Basin Fund balance reached a level that CRSP MC could no longer provide the cash for the firming purchases. As a result, the CRSP MC worked closely with its customers to find alternative solutions to remedy this situation. Western appreciates its firm power customers' assistance in this matter and recognizes the financial hardships to the customers due to market volatility and market conditions. The CRSP MC is establishing a firm power rate at the lowest possible rate consistent with sound business practices. This rate will allow the CRSP MC to return to including firming purchases to meet contract capacity and energy commitments in the firm power rate.

8. Miscellaneous

A. *Comment:* Several customers expressed concerns regarding decreased project use energy for A–LP and its impact on the firm power rate. Some customers questioned if this energy should be AHP.

Response: The total energy sales used to calculate the existing rate is different

from the proposed rate due to the reduction in project use commitments. The energy used as the rate denominator is the sum of firm power and project use commitments. This difference is made available as AHP if Western has surplus generation, or it is used to reduce the amount of purchased power needs. Annually, Western experiences changes in the amount of total energy sales because of updated estimates for project use loads. For example, in the last rate process, the energy amount increased by 453 GWh because the contractual energy delivered was projected to increase throughout the rate-setting period.

B. *Comment:* Customers inquired if the PRS reflects the downsized A–LP in aid to irrigation amounts.

Response: The PRS currently includes no revenue requirements associated with the A–LP. The irrigation assistance requirements of the CUP and the provisions for the State of Colorado's apportionment as included in the CRSP Act provides more than enough revenue to Colorado for its planned irrigation development projects.

C. *Comment:* A customer wants to understand what non-reimbursable costs are excluded from the Rate-Setting PRS.

Response: All non-reimbursable costs are excluded from the Rate-Setting PRS. For Western, non-reimbursable costs excluded are RIP initiatives and purchased power costs for low-water monitoring studies pertaining to implementing the GCPA. This includes costs for some personnel at CRSP MC and the Corporate Services Office who perform activities related to the RIP and GCPA. RIP costs also include a contract with Argonne National Laboratories (DOE).

In Reclamation's budget, costs for the Glen Canyon Adaptive Management Program as well as the RIP base funding are considered non-reimbursable costs. Also excluded from the PRS because of non-reimbursability are such Reclamation costs as land resources management.

D. *Comment:* A customer wants assurance that Glen Canyon experimental flows are non-reimbursable.

Response: Glen Canyon experimental test flows occurred in FY 2000. The purchased power expense that was deemed to be non-reimbursable amounted to $21.5 million in FY 2000. These were a result of experimental flows and are reflected as non-reimbursable expenses in the Rate-Setting PRS. As stated in Section 1807 of the GCPA, ''All costs of preparing the environmental impact statement described in section 1804, including supporting studies, and the long-term monitoring programs and activities described in section 1805 shall be non-reimbursable.''

E. *Comment:* A customer wants to know when the FYs 2000 and 2001 audited financial data will be available.

Response: Western finalized the audited financial statements for FY 2000 in March 2002. Western expects to complete FY 2001 audited financial statements before the end of 2002.

F. *Comment:* A customer wants to know what is included in Miscellaneous Revenues.

Response: This category includes ancillary services, facility-use charges, administrative charges, auxiliary services, and other miscellaneous operating revenues.

G. *Comment:* Customers expressed concern that AHP revenues are not in the PRS.

Response: AHP sales result when Western has additional hydrogeneration above what is obligated to the firm power customer by contract. Revenue from these sales is reflected historically in the firm power revenues. In forecasting future years in the Rate-Setting PRS, this additional hydro is used to offset projected purchase power needs.

CRSP Transmission Discussion

A new rate methodology is being proposed that is more consistent with the methodology used at other Western regions and other utilities. The proposed methodology is an annual fixed charge formula that will be used to determine the revenue requirement to be recovered from transmission service. The annual transmission revenue requirement includes O&M expense, administrative and general expense, interest expense, and depreciation expense from the most recent historical test year. This transmission revenue requirement is offset by appropriate CRSP revenue credits.

The CRSP transmission system includes its own facilities and the transmission facilities owned by others over which the CRSP MC has contractual rights. All the costs of the CRSP transmission system, including the costs paid to others for the contractual rights on their transmission lines, are in the total CRSP transmission revenue requirement.

The provisional firm transmission rate will be applied to customers who purchase transmission services. The costs of CRSP firm transmission associated with the delivery of SLCA/IP firm power are included in the firm power rate.

The costs for providing scheduling, system control, and dispatch service are included in the appropriate provisional transmission services rates. Because the CRSP transmission system lies in two other Western Regions, the charges for reactive supply and voltage control service will be in accordance with each Region's applicable tariff.

The provisional transmission rate formulas are scheduled to go into effect October 1, 2002, to correspond with the effective date of the provisional firm power rate.

CRSP Transmission Rate

Point-to-Point

The current firm transmission rate expires March 30, 2003. The provisional rate for firm point-to-point CRSP transmission service for FY 2003 is $2.06 per kWmonth and will result in a 16 percent increase from the existing rate of $1.78 per kWmonth under Rate Schedule SP–PTP6, effective April 1, 2002. The provisional rate for non-firm CRSP transmission service is expressed in mills/kWh and is based on the current CRSP firm point-to-point rate, and may be discounted. The non-firm transmission rate for FY 2003 is 2.82 mills/kWh.

The proposed transmission rate methodology is different from the current transmission rate methodology, primarily in four areas. The first area is the basis for cost projections. In the current transmission rate calculation, the CRSP MC uses the average of 5-year projections. The provisional transmission rate is based on the most recent financial data from 1 year.

The second area is the allocating of Western's O&M costs in the revenue requirement that are allocable to generation and transmission. In the current transmission rate calculation, the CRSP MC determines the percentage of CRSP transmission investment relative to total CRSP Reclamation and Western investment and applies this percentage to projected Western CRSP O&M budgets. The provisional transmission rate is based on the percentage of Western's CRSP transmission investment to total Western CRSP investment, and this percentage is applied to Western's test year O&M costs.

The third area is the allocation of Western's capital costs attributable to both generation and transmission. In the current transmission rate calculation, the CRSP MC assigns these costs to generation and transmission on a 50/50 basis. In the provisional transmission rate calculation, Western has analyzed capital costs more closely and assigned

them more specifically relative to transmission usage.

The fourth area is the annual recalculation of the formula. In the current transmission rate, the CRSP MC annually updates revenue credits and transmission capacity reservations and holds the annual revenue requirement constant. The provisional transmission rate recalculates all components of the formula annually as new test year data become available.

The increase in the CRSP firm transmission service rate is due to the gross transmission revenue requirement increasing. This increase is being offset by an increase in transmission revenue credits and in firm wheeling reservations.

This table summarizes the difference in calculations between the current transmission rate and the provisional transmission rate. The table compares the change in the average annual projections used in the FY 2002 transmission study (which set the rate effective April 1, 2002) and the annual projections used in the rate-setting transmission study for this rate adjustment.

COMPARISON OF ANNUAL REVENUE REQUIREMENTS

Item	Unit	Existing rate	Provisional rate	% Change
Annual Revenue Requirement	$	63,271,051	77,134,227	22
Transmission Revenue Credits	$	8,302,800	11,854,759	43
Net Annual Revenue Requirement	$	54,968,215	65,279,468	19
Firm Obligations	kW	2,134,792	2,226,740	4
Firm Point-to-Point Transmission Contracts		442,420	444,132	1
Network Integration Loads		0	0	
Transmission System Total Load	kW	2,577,212	2,640,341	2
Cost per Year	$	21.33	24.72	16
Cost per Month	$	1.78	2.06	16

The increase in annual Revenue Requirements is primarily a result of a revised methodology and increased O&M expenses. The increase in transmission credits is primarily a result of increased non-firm transmission and ancillary service revenues. The increase in firm power obligations is primarily a result of applying test year data instead of a 5-year average.

Network

The same revenue requirement that was used in determining the provisional firm point-to-point transmission rate will also be used in the provisional rate formula for network integration transmission service. The provisional charge for the monthly demand for network integration transmission service will be the product of the network customer's load ratio share times one-twelfth (1/12) of the annual transmission revenue requirement. The load ratio share will be based on the network customer's hourly load (including its designated network load not physically interconnected with Western), coincident with CRSP's monthly transmission system peak, which will be calculated on a rolling 12–CP basis. Western's transmission system peak includes the sum of capacity reserved for point-to-point transmission, 12–CP monthly entitlements for SLCA/IP firm power customers, and the average 12–CP monthly system peak for network transmission service. The provisional rate formula is to be effective for the period beginning October 1, 2002, through September 30, 2007.

Basis for Rate Development

The existing rates for CRSP firm and non-firm transmission in Rate Schedules SP–PTP5, SP–NW1, and SP–NFT4 expire March 30, 2003. The rate adjustment contains rates that replace existing rates. The adjusted rates reflect a revised methodology and increases in O&M costs, revenue credits, and transmission system load. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment within the allowable period. The provisional rates will take effect on October 1, 2002, to correspond with the start of the Federal fiscal year and will remain in effect through September 30, 2007.

The provision for reactive power adjustment is part of the provisional rates for CRSP firm and non-firm transmission. The provisions and methodologies for this adjustment are not being modified and will remain as specified in SP–PTP5, SP–NW1, and SP–NFT5.

The adjustment for losses provision contained in Rate Schedules SP–PTP5, SP–NW1, and SP–NFT5 will remain the same and also include a statement to allow for financial compensation to recover losses.

The proposed rates for CRSP transmission include a provision to pass through electric industry restructuring costs associated with providing transmission service. These costs will be passed through to each appropriate transmission customer.

Comments

The comments and responses regarding the transmission rates, paraphrased for brevity when not affecting the meaning of the statement(s), are discussed below. Direct quotes from comment letters are used for clarification where necessary.

A. *Comment:* A customer inquired if there is an additional methodology to reconcile between the old method and the proposed transmission method in terms of revenues collected.

Response: Western has proposed a revised methodology for determining a rate to charge for transmission service. Any costs that are not included in the transmission revenue requirement are in the firm power revenue requirement. The firm power rate includes both transmission and power revenue requirements for firm power customers and reflects the revenues from firm and non-firm transmission as an offset. Therefore, the reconciling or balancing occurs in the firm power rate.

B. *Comment:* A customer requested an explanation of the change in the components of the transmission rate denominator from the transmission rate effective April 1, 2001, to the proposed rate.

Response: The April 1, 2001, rate included the (1) 1–CP firm power contract commitments, (2) 130,000 kW of Merchant Function reservation, (3) 250,000 kW for the Salt River Project

Exchange, and (4) 406,446 kW for firm transmission reservations.

The provisional transmission rate includes the (1) 12–CP of firm power contract commitments, (2) 555,000 kW of Merchant Function reservation, (3) 250,000 kW for the Salt River Project Exchange, and (4) 444,132 kW for firm transmission reservations.

C. *Comment:* A customer requested an explanation of the impact of the Reclamation investment exclusion in transmission O&M.

Response: The existing transmission rate methodology allocates Western budgeted O&M based on the relationship between Western transmission investment to total Western and Reclamation investment. The proposed method allocates Western's test year O&M based on CRSP transmission investment to total CRSP investment and does not include Reclamation investment. More of Western's O&M expenses are allocated to transmission under the proposed methodology.

D. *Comment:* A customer wanted to know if multi-project cost allocations impact the CRSP transmission amount included in the rate formula.

Response: The CRSP transmission rate includes test year O&M expenses for Western's CRSP MC, DSWR, and RMR offices. O&M expenses are derived consistently with how these are budgeted, which is based on appropriate cost allocation, *e.g.* multi-project. Therefore, multi-project cost allocations do have an impact on the CRSP transmission rate.

E. *Comment:* A customer requested an explanation of the ''adjustment for industry restructuring'' and questioned if this clause was included in the existing rate schedule.

Response: As discussion about Regional Transmission Organizations, Independent Transmission Companies, and Independent System Operators continues, Western is concerned that, if it joins such a group, the costs to join groups such as these be recovered through the transmission rate and that such recovery of costs could be delayed with substantial costs accruing. Furthermore, these costs (such as scheduling and dispatch) may not be allocable to all transmission customers. Therefore, the adjustment will allow Western to pass through those costs as they occur to the appropriate customer. Inasmuch as these costs are reflected as O&M expenses, Western will ensure that these costs are not being accounted for twice.

F. *Comment:* A customer wanted to know how current the 9.10-percent fixed charge rate is in the Supporting Documentation. The customer wanted to know when the FY 2000 data will be available.

Response: The fixed charge rate is a percentage calculation applied to the net transmission investment to derive an annual transmission revenue requirement. The 9.10 percent is the amount of interest charge listed in the Supporting Documentation. The fixed charge rate listed is 23.57 percent. This is based on FY 1999 data.

The FY 2000 data became available in early March 2002. The 9.10-percent interest charge and the annual fixed charge rate have changed as a result of incorporating FY 2001 data as the test year. These amounts are now 9.55 percent for the interest charge, and 25.17 percent for the annual fixed charge rate.

G. *Comment:* A customer believes there is a difference in transmission rates between the firm transmission and firm power customers. Firm power customers are assessed a constant bundled rate; firm transmission customers are assessed the rate that is developed annually. The customer wants to understand how the annual transmission rate changes impact the power repayment study.

Response: The calculation for delivery to Firm Electric Service customers is on the same basis as for other firm transmission customers. The transmission rate denominator reflects the use of the CRSP transmission system by all parties, including the CRSP Merchant Function and Firm Electric Service customers. The same costs are applied to both transmission and firm power customers using the CRSP transmission system.

The CRSP MC prepares a power repayment study annually. As part of this, a projection of firm transmission revenues and all costs of transmission service are included. These firm transmission revenues are based on the transmission rate then in effect. If the annual recalculation of the transmission rate results in a change in the forecast and if no other changes in the power repayment study occur, a revision to the firm power rate will likely be needed. However, because the transmission costs of the firm power customers are only one component of the bundled service and many other components of the power repayment study are changing and may offset the impact of a firm transmission rate change, a firm power rate change may not be necessary.

H. *Comment:* A customer wanted to know if Western offers Network Service.

Response: CRSP is not currently providing Network Service to any transmission customers. Once Western receives a request for this service, a study would be conducted to determine its feasibility.

Ancillary Services Discussion

On April 1, 1998, the Western Area Upper Colorado control area, within which most of the CRSP transmission system lies, operated by the CRSP MC, was merged into two other control areas. These control areas are WACM, operated by Western's RMR, and WALC, operated by Western's DSWR.

Six transmission ancillary services will be offered by the CRSP MC. These are (1) scheduling, system control, and dispatch service, (2) reactive supply and voltage control service, (3) regulation and frequency response service, (4) energy imbalance service, (5) spinning reserve service, and (6) supplemental reserve service. The first two—scheduling, system control, and dispatch service; and reactive supply and voltage control service—are required services. The remaining four will also be offered from the control area or from the CRSP Merchant Function. These ancillary services are listed in Western's Tariff.

Western's use of SLCA/IP resources to provide sales of ancillary services is subject to availability. Western has allocated most of its SLCA/IP power resources to preference entities under long-term commitments. Western will determine if any of its SLCA/IP resources are available to provide the ancillary service requested at the time of the request.

The provisional rates for ancillary services are designed to recover only the costs associated with providing the service(s). The costs for providing scheduling, system control, and dispatch service are included in the provisional transmission service rates. The provisional rates and descriptions for the six ancillary services are:

PROVISIONAL ANCILLARY SERVICES RATES

Ancillary service type	Ancillary service description	Provisional rate
Scheduling, System Control, and Dispatch	Required to schedule the movement of power through, out of, within, or into a control area.	Included in appropriate transmission rates.
Reactive Supply and Voltage Control	Reactive power support provided from generation facilities that is necessary to maintain transmission voltages within acceptable limits of the system.	DSWR rate schedule—DSW–RS1, or RMR rate schedule—L–AS2, or as superseded.
Regulation and Frequency Response	Generation provided to match resources and loads on a real-time continuous basis.	If available from SLCA/IP resources, the firm capacity rate will apply. If unavailable, DSWR rate schedule—DSW–FR1, or RMR rate schedule—L–AS3 or as superseded will apply.
Energy Imbalance	Provided when a difference occurs between the scheduled and actual delivery of energy to a load or from a generation resource within a control area over a single hour.	DSWR rate schedule—DSW–EI1, or RMR rate schedule—L–AS4 or as superseded, or the customer can make alternative comparable arrangements.
Spinning Reserve	Needed to serve load immediately in the event of a system contingency.	Based on terms and conditions of WSPP contract.
Supplemental Reserve	Needed to serve load in the event of a system contingency; however, it is not available immediately to serve load, butof rather within a short period of time.	Based on terms and conditions WSPP contract.

Comments

The comments and responses regarding ancillary service rates, paraphrased for brevity when not affecting the meaning of the statement(s), are discussed below. Direct quotes from comment letters are used for clarification where necessary.

Comments

A. *Comment:* A customer wanted to know where regulation services come from that go to WACM.

Response: CRSP resources provide 20 MW to the WACM control area to regulate SLCA/IP firm electric service loads in that control area. WACM uses its own resources to provide regulation to its customers.

B. *Comment:* A customer questioned the role of Western's control area consolidation in causing the increase in losses.

Response: Western is still examining this issue and believes that the increase in the Glen Canyon loss factor from previous amounts is likely due to several factors, one of which is increased use of the CRSP transmission system.

CRSP MC has recently reduced the losses applied in determining available generation from 11 percent from all generators to 5.5 percent, with the exception of Glen Canyon which remains at 11 percent. The average loss factor applied equates to 9.35 percent.

C. *Comment:* A customer questioned if CRSP is being fairly compensated for ancillary services. The customer requested assurance that ancillary services are appropriately credited to the Basin Fund from other regions.

Response: The CRSP MC revenue requirements for ancillary services are used to calculate rates for ancillary services in each particular region. Accounting mechanisms have been put into place to track these revenues. Since 1998, the CRSP MC has received approximately $8 million into the Basin Fund from ancillary service revenues.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, *et seq.*; Council on Environmental Quality Regulations, 40 CFR parts 1500–1508; and DOE NEPA Regulations, 10 CFR part 1021, Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Availability of Information

Information about this rate adjustment, including power repayment studies, comments, letters, memorandums, and other supporting material made or kept by Western used to develop the provisional rates, is available for public review in the Colorado River Storage Project Management Center, Western Area Power Administration, 150 East Social Hall Avenue, Suite 300, Salt Lake City, Utah.

Submission to the Federal Energy Regulatory Commission

The interim rates herein confirmed, approved, and placed into effect, together with supporting documents, will be submitted to FERC for confirmation and final approval.

Order

In view of the foregoing and pursuant to the authority delegated to me, I confirm and approve on an interim basis, effective October 1, 2002, Rate Schedules SLIP–F7, SP–PTP6, SP–NW2, SP–NFT5, SP–SD2, SP–RS2, SP–EI2, SP–FR2, and SP–SSR2 for the Salt Lake City Area Integrated Projects and the

Colorado River Storage Project of the Western Area Power Administration. The rate schedules shall remain in effect on an interim basis, pending FERC's confirmation and approval of them or substitute rates on a final basis through September 30, 2007.

Dated: September 10, 2002.

Spencer Abraham,

Secretary.

Salt Lake City Area Integrated Projects; Arizona, Colorado, Nevada, New Mexico, Utah, Wyoming; Schedule of Rates for Firm Power Service

Effective: The first day of the first full billing period beginning on or after October 1, 2002, and extending through September 30, 2007, or until superseded by another rate schedule, whichever occurs earlier.

Available: In the area served by the Salt Lake City Area Integrated Projects.

Applicable: To the wholesale power customer for firm power service supplied through one meter at one point of delivery, or as otherwise established by contract.

Character and Conditions of Service: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rates: Demand Charge: $4.04 per kilowatt of billing demand.

Energy Charge: 9.5 mills per kilowatthour of billing energy.

Billing Demand

The billing demand will be the greater of:

1. The highest 30-minute integrated demand measured during the month up to, but not more than, the delivery obligation under the power sales contract, or

2. The Contract Rate of Delivery.

Billing Energy: The billing energy will be the energy measured during the month up to, but not more than, the delivery obligation under the power sales contract.

Adjustment for Transformer Losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

Adjustment for Power Factor: The customer will be required to maintain a power factor at all points of measurement between 95 percent lagging and 95 percent leading.

Adjustment for Western Replacement Power: Pursuant to the Contractor's Firm Electric Service Contract, as amended, Western will bill the Contractor for its proportionate share of the costs of Western Replacement Power (WRP) within a given time period. Western will include in the Contractor's monthly power bill the cost of the WRP and the incremental administrative costs associated with Western Replacement Power.

Adjustment for Customer Displacement Power Administrative Charges: Western will include in the Contractor's regular monthly power bill the incremental administrative costs associated with Customer Displacement Power.

Colorado River Storage Project; Arizona, Colorado, Nevada, New Mexico, Utah; Schedule of Rate for Firm Point-to-Point Transmission Service

Effective: The first day of the first full billing period beginning on or after October 1, 2002, and extending through September 30, 2007, or until superseded by another rate schedule, whichever occurs earlier.

Available: In the area served by the Colorado River Storage Project (CRSP) transmission system.

Applicable: To firm point-to-point transmission service customers for which power and energy are supplied to the CRSP transmission system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the CRSP transmission system established by contract.

Character and Conditions of Service: Transmission service for alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

Point-to-Point Rate Formula: The firm point-to-point rate is based on a test year using an annual fixed charge methodology. The test year is the most recent historical data available. The annual revenue requirement is reduced by revenue credits. The resultant net annual cost to be recovered is divided by the capacity reservation needed to meet firm power and transmission commitments in kW, including the total network integration loads at system peak, to derive a cost/kWyear. The cost/kWyear is calculated using the following formula:

1. $ARR - TRC = NARR$

2. $\frac{NARR}{TSTL}$

Where:

ARR = Annual Revenue Requirement. The costs associated with facilities that support the transfer capability of the CRSP transmission system, excluding generation facilities. These costs include investment costs, interest expense, depreciation expense, administrative and general expenses, and operation and maintenance expense, including transmission purchases. Transmission purchases reflect those costs associated with CRSP contractual rights.

TRC = Transmission Revenue Credits. The revenues generated by the CRSP transmission system, such as scheduling and dispatch ancillary service revenues and phase shifter revenues, and excluding long-term firm transmission revenues.

NARR = NetAnnual Transmission Revenue Requirement. The Annual Revenue Requirement less Transmission Revenue Credits.

TSTL = CRSP Transmission System Total Load. The sum of the total CRSP transmission capacity under the long-term reservation plus the total network integration loads at system peak.

This formula will be recalculated annually by applying the data from the most current historical test year. If needed, a revised rate will be placed into effect every October 1. Western will provide notification 30 days prior to a revised rate becoming effective.

The rate for transmission service includes scheduling, system control, and dispatch. Rate Schedule SP-RS2, or any superseding rate schedule, for reactive supply and voltage control is attached as part of this Rate Schedule and applies to firm point-to-point transmission customers.

Billing: The point-to-point transmission customer will be billed monthly by applying the resulting rate to the maximum amount of capacity reserved, payable whether used or not, except as otherwise provided in existing contracts.

Requirements for Reactive Power: Requirements for reactive power shall be as established by contract; otherwise, there shall be no entitlement to transfer of reactive kilovolt amperes at delivery points except when such transfers may be mutually agreed upon by the Contractor and the contracting officer or their authorized representatives.

Adjustment for Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer as established by contract. If losses are not fully provided by a transmission customer, charges for financial compensation may apply.

Adjustment for Industry Restructuring: Any transmission-related

costs incurred by Western due to electric industry restructuring or other industry changes associated with providing CRSP transmission service will be passed through to each transmission customer, as appropriate.

Colorado River Storage Project; Arizona, Colorado, Nevada, New Mexico, Utah; Monthly Charge Calculation for Network Integration Transmission Service

Effective: The first day of the first full billing period beginning on or after October 1, 2002, and extending through September 30, 2007, or until superseded by another rate schedule, whichever occurs earlier.

Available: In the area served by the Colorado River Storage Project (CRSP) transmission system.

Applicable: To network transmission service customers for which power and energy are supplied to the CRSP transmission system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the CRSP transmission system established by contract.

Character and Conditions of Service: Transmission service for alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

Monthly Network Formula: The network integration transmission service charge will be the product of the network customer's load ratio share times one twelfth (1/12) of the total net annual transmission revenue requirement. The same Net Annual Transmission Revenue Requirement is used in determining the rate for network transmission service as for point-to-point transmission service. It is based on a test year using an annual fixed charge methodology. The test year is the most recent historical data available. The annual revenue requirement is reduced by revenue credits. The formula is as follows:

1. $ARR - TRC = NARR$

2. $\frac{NARR}{12} \times \text{Transmission Customer's Load-Ratio Share}$

Where:

ARR = Annual Revenue Requirement. The costs associated with facilities that support the transfer capability of the CRSP transmission system, excluding generation facilities. These costs include investment costs, interest expense, depreciation expense, administrative and general expenses, and operation and maintenance expense, including transmission purchases. Transmission purchases reflect those costs associated with CRSP contractual rights.

TRC = Transmission Revenue Credits. The revenues generated by the CRSP transmission system, such as scheduling and dispatch ancillary services revenues and phase shifter revenues, and excluding long-term firm transmission revenues.

NARR = Net Annual Transmission Revenue Requirement. The Annual Revenue Requirement less Transmission Revenue Credits.

Load-Ratio Share = Network customer's hourly load (including its designated network load not physically interconnected with Western) coincident with Western's monthly CRSP transmission system peak.

This formula will be recalculated annually by applying the data from the most current historical test year. If needed, a revised rate will be placed into effect every October 1. Western will provide notification 30 days prior to a revised rate becoming effective.

The monthly charge for network transmission service includes scheduling, system control, and dispatch. Rate Schedule SP-RS2, or any superseding rate schedule, will be attached as part of this Rate Schedule and applies to network transmission customers.

Billing: Billing determinants for the formula rate above will be as specified in the service agreement.

Requirements for Reactive Power: Requirements for reactive power shall be as established by contract; otherwise, there shall be no entitlement to transfer of reactive kilovolt amperes at delivery points except when such transfers may be mutually agreed upon by the Contractor and the contracting officer or their authorized representatives.

Adjustment for Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer as established by contract. If losses are not fully provided by a transmission customer, charges for financial compensation may apply.

Adjustment for Industry Restructuring: Any transmission-related costs incurred by Western due to electric industry restructuring or other industry changes associated with providing CRSP transmission service will be passed through to each transmission customer, as appropriate.

Colorado River Storage Project; Arizona, Colorado, Nevada, New Mexico, Utah; Schedule of Rate for Non-Firm, Point-to-Point, Transmission Service

Effective: The first day of the first full billing period beginning on or after October 1, 2002, and extending through September 30, 2007, or until superseded by another rate schedule, whichever occurs earlier.

Available:

In the area served by the Colorado River Storage Project (CRSP) transmission system.

Applicable: To non-firm, point-to-point, transmission service customers for which power and energy are supplied to the CRSP transmission system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the CRSP transmission system as established by contract.

Character and Conditions of Service: Transmission service on an interruptible basis for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract or in advance by the Western Area Power Administration (Western). Conditions for curtailment shall be determined by Western and in accordance with Western's Tariff.

Rate: The proposed rate for non-firm, point-to-point, CRSP transmission service is based upon the firm point-to-point rate expressed in mills/kWh. This rate may be discounted.

Billing: The rate will be applied to each kWh delivered at the point of delivery, as specified in the service contract.

Adjustments for Reactive Power: None. There shall be no entitlement to transfer of reactive kilovolt-amperes at delivery points, except when such transfers may be mutually agreed upon by the Contractor and the contracting officer or their authorized representatives.

Adjustments for Losses: Power and energy losses incurred in connection

with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract. If losses are not fully provided by a transmission customer, charges for financial compensation may apply.

Adjustment for Industry Restructuring: Any transmission-related costs incurred by Western due to electric industry restructuring or other industry changes associated with providing CRSP transmission service will be passed through to each transmission customer, as appropriate.

Colorado River Storage Project; Arizona, Colorado, Nevada, New Mexico, Utah; Schedule of Rates for Scheduling, System Control, and Dispatch Ancillary Service

Effective: Beginning on October 1, 2002, and extending through September 30, 2007.

Available: In the area served by the Colorado River Storage Project (CRSP) transmission system.

Applicable: To all CRSP transmission customers receiving this service.

Character of Service: Scheduling, System Control, and Dispatch is required to schedule the movement of power through, out of, within, or into a control area.

Rate: Included in appropriate transmission rates.

Colorado River Storage Project; Arizona, Colorado, Nevada, New Mexico, Utah; Schedule of Rate for Reactive Supply and Voltage Control Ancillary Service

Effective: Beginning on October 1, 2002, and extending through September 30, 2007.

Available: In the area served by the Colorado River Storage Project (CRSP) transmission system.

Applicable: To all CRSP transmission customers receiving this service.

Character of Service: Reactive power is support provided from generation facilities that is necessary to maintain transmission voltages within acceptable limits of the system.

Rate: Provided through WALC under Rate Schedule DSW–RS1 or WACM under Rate Schedule L–AS2, or as superseded.

Colorado River Storage Project; Arizona, Colorado, Nevada, New Mexico, Utah; Schedule of Rates for Energy Imbalance Ancillary Service

Effective: Beginning on October 1, 2002, and extending through September 30, 2007.

Available: In the area served by the Colorado River Storage Project (CRSP) transmission system.

Applicable: To all CRSP transmission customers receiving this service.

Character of Service: Provided when a difference occurs between the schedules and the actual delivery of energy to a load located within a control area over a single hour.

Rates: Provided through WALC under Rate Schedule DSW–E1 or WACM under Rate Schedule L–AS3, or as superseded, or the customer can make alternative comparable arrangements to satisfy its Energy Imbalance service obligations.

Colorado River Storage Project; Arizona, Colorado, Nevada, New Mexico, Utah; Schedule of Rate for Regulation and Frequency Response Ancillary Service

Effective: Beginning on October 1, 2002, and extending through September 30, 2007.

Available: In the area served by the Colorado River Storage Project (CRSP) transmission system.

Applicable: To all CRSP transmission customers receiving this service.

Character of Service: Necessary to provide for the continuous balancing of resources, generation and interchange, with load and for maintaining schedules interconnection frequency at sixty cycles per second (60 Hz).

Rate: If the CRSP MC has regulation available for sale, the SLCA/IP firm power capacity rate, currently in effect, will be charged. If regulation is unavailable from SLCA/IP resources, the WALC or WACM control areas can provide the service, in accordance with their respective rate schedules.

Colorado River Storage Project; Arizona, Colorado, Nevada, New Mexico, Utah; Schedule of Rates for Spinning and Supplemental Reserve Ancillary Service

Effective: Beginning on October 1, 2002, and extending through September 30, 2007.

Available: In the area served by the Colorado River Storage Project (CRSP) transmission system.

Applicable: To all CRSP transmission customers receiving this service.

Character of Service: Spinning Reserve is defined in Schedule 5 of Western Area Power Administration's Open Access Transmission Tariff.

Supplemental Reserve is defined in Schedule 6 of Western Area Power Administration's Open Access Transmission Tariff.

Rate: The transmission customer serving loads within the transmission provider's control area must acquire Spinning and Supplemental Reserve services from Western, from a third party, or by self supply. If the CRSP MC provides these services, the rates under the Western Systems Power Pool contract will apply.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7383–3]

Agency Information Collection Activities: Request for Comments on Fourteen Proposed Information Collection Requests (ICRs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA (the Agency) is planning to submit the fourteen continuing Information Collection Requests (ICRs) listed in Section A of this notice to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of the **SUPPLEMENTARY INFORMATION** provided in this notice.

DATES: Comments must be submitted on or before November 26, 2002.

ADDRESSES: Compliance Assessment and Media Programs Division, Office of Compliance, Office of Enforcement and Compliance Assurance, Mail Code 2223A, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A hard copy of a specific ICR may be obtained without charge by calling the identified information contact person listed in Section B under Supplementary Information.

FOR FURTHER INFORMATION CONTACT: For specific information on an individual ICR, contact the person listed in Section B under Supplementary Information.

SUPPLEMENTARY INFORMATION:

For All ICRs

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who respond through the use of automated, electronic, mechanical, or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; 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.

In the absence of the information collection requirements in each applicable standard, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by New Source Performance Standards (NSPS) must be retained by the owner or operator for at least two years; records required by the National Emission Standards for Hazardous Air Pollutants (NESHAP) must be retained by the owner or operator for at least five years; and the records required by the NESHAP Maximum Achievable Control Technology standards (NESHAP–MACT) must be retained by the owner or operator for at least five years. In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (*See* 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 2, 1979).

The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved ICRs. Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of the Paper Work Reduction Act.

Section A: List of ICRs to be Submitted for OMB Review and Approval

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following fourteen continuing ICRs to the Office of Management and Budget (OMB).

(1) *NESHAP Subpart E:* NESHAP for Mercury (40 CFR part 61, subpart E); EPA ICR Number 0113.08, OMB Control Number 2060–0097; expiration date June 30, 2003.

(2) *NSPS Subpart KK:* NSPS for Lead Acid Battery Manufacturing (40 CFR part 60, subpart KK); EPA ICR Number 1072.07; OMB Control Number 2060–0081; expiration date June 30, 2003.

(3) *NSPS Subpart L:* NSPS for Secondary Lead Smelters (40 CFR part 60, subpart L); EPA ICR Number 1128.07; OMB Control Number 2060–0080; expiration date June 30, 2003.

(4) *NSPS Subparts T, U, V, W and X:* NSPS for the Phosphate Fertilizer Industry (Subparts T, U, V, W, X); EPA ICR Number 1061.09; OMB Control Number 2060–0037; expiration date June 30, 2003.

(5) *NSPS Subparts AA and AAa:* NSPS for Steel Plants—Electric Arc Furnaces and Argon Oxygen Decarbonization Vessels (40 CFR part 60, subparts AA and AAa); EPA ICR Number 1060.11; OMB Control Number 2060–0038; expiration date June 30, 2003.

(6) *NSPS Subpart OOO:* NSPS for Nonmetallic Mineral Processing (40 CFR part 60, subpart OOO); EPA ICR Number 1084.07; OMB Control Number 2060–0050; expiration date June 30, 2003.

(7) *NSPS Subpart FFF:* NSPS for Flexible Vinyl and Urethane Coating and Printing (40 CFR part 60, subpart FFF), EPA ICR 1157.07, OMB Control Number 2060–0073, expiration date June 30, 2003.

(8) *NSPS Subpart TTT:* NSPS for the Surface Coating of Plastic Parts for Business Machines (40 CFR part 60, subpart TTT); EPA ICR Number 1093.07; OMB Control Number 2060–0162; expiration date July 31, 2003.

(9) *NESHAP–MACT Subpart RRR:* NESHAP–MACT for Secondary Aluminum Production (40 CFR part 63, subpart RRR); EPA ICR Number 1894.03; OMB Control Number 2060–0433; expiration date July 31, 2003.

(10) *NSPS Subpart PPP and NESHAP–MACT Subpart NNN:* NSPS for Wool Fiberglass Insulation Manufacturing Plants (40 CFR part 60, subpart PPP), and NESHAP–MACT for Wool Fiberglass Manufacturing Plants (40 CFR part 63, subpart NNN); EPA ICR Number 1160.07; OMB Control Number 2060–0114; expiration date July 31, 2003.

(11) *NESHAP–MACT Subpart II:* NESHAP for Shipbuilding and Ship Repair Facilities—Surface Coating (40 CFR part 63, subpart II); EPA ICR Number 1712.04; OMB Control Number 2060–0330; expiration date August 31, 2003.

(12) *NESHAP–MACT Subpart KK:* NESHAP for the Printing and Publishing Industry (40 CFR part 63, subpart KK); EPA ICR 1739.04; OMB Control Number 2060–0335; expiration date September 30, 2003.

(13) *NESHAP–MACT Subpart M:* NESHAP for Perchloroethylene Dry Cleaning Facilities (40 CFR part 63, subpart M); OMB Control Number 2060–0234; EPA ICR Number 1415.05; expiration date September 30, 2003.

(14) *NSPS Subpart MM:* NSPS for Automobile and Light Duty Truck Surface Coating Operations (40 CFR part 60, subpart MM); EPA ICR Number 1064.10; OMB Control Number 2060–0034; expiration date September 30, 2003.

Section B: Contact Person for Individual ICRs

(1) *NESHAP Subpart E:* NESHAP for Mercury (40 CFR part 61, subpart E); María Malavé of the Office of Compliance at (202) 564–7027 or via e-mail at *malave.maria@epa.gov;* EPA ICR Number 0113.08, OMB Control Number 2060–0097; expiration date June 30, 2003.

(2) *NSPS Subpart KK:* NSPS for Lead Acid Battery Manufacturing (40 CFR part 60, subpart KK); María Malavé of the Office of Compliance at (202) 564–7027 or via e-mail at *malave.maria@epa.gov;* EPA ICR Number 1072.07; OMB Control Number 2060–0081; expiration date June 30, 2003.

(3) *NSPS Subpart L:* NSPS for Secondary Lead Smelters (40 CFR part 60, subpart L); María Malavé of the Office of Compliance at (202) 564–7027 or via e-mail at *malave.maria@epa.gov;* EPA ICR Number 1128.07; OMB Control Number 2060–0080; expiration date June 30, 2003.

(4) *NSPS Subparts T, U, V, W and X:* Standards of Performance for New Stationary Sources for Phosphate

Fertilizer Industry (Subparts T, U, V, W, X); Stephen Howie of the Office of Compliance at (202) 564–4146 or e-mail at *howie.stephen@epa.gov;* EPA ICR Number 1061.09; OMB Control Number 2060–0037; expiration date June 30, 2003.

(5) *NSPS Subparts AA and AAa:* NSPS for Steel Plants—Electric Arc Furnaces and Argon Oxygen Decarbonization Vessels (40 CFR part 60, subparts AA and AAa); María Malavé of the Office of Compliance at (202) 564–7027 or via e-mail at *malave.maria@epa.gov;* EPA ICR Number 1060.11; OMB Control Number 2060–0038; expiration date June 30, 2003.

(6) *NSPS Subpart OOO:* NSPS for Nonmetallic Mineral Processing(40 CFR part 60, subpart OOO); Gregory Fried of the Office of Compliance at(202) 564–7016 or via e-mail at *fried.gregory@epa.gov;* EPA ICR Number 1084.07; OMB Control Number 2060–0050; expiration date June 30, 2003.

(7) *NSPS Subpart FFF:* NSPS for the Flexible Vinyl and Urethane Coating and Printing Industry (40 CFR part 60, subpart FFF); Sharie Centilla of the Office of Compliance at (202) 564–0697 or via e-mail at *centilla.sharie@epa.gov;* EPA ICR Number 1157.06; OMB Control Number 2060–0073; expiration date June 30, 2003.

(8) *NSPS Subpart TTT:* NSPS for the Surface Coating of Plastic Parts for Business Machines (40 CFR part 60, subpart TTT); Steven Hoover of the Office of Compliance at (202) 564–7007 or via e-mail at *hoover.steven@epa.gov;* EPA ICR Number 1093.07; OMB Control Number 2060–0162; expiration date July 31, 2003.

(9) *NESHAP–MACT Subpart RRR:* NESHAP–MACT for Secondary Aluminum Production (40 CFR part 63, subpart RRR); EPA ICR Number 1894.03; OMB Control Number 2060–0433; expiration date July 31, 2003; María Malavé of the Office of Compliance at (202) 564–7027 or via e-mail at *malave.maria@epa.gov;* EPA ICR Number 1894.03; OMB Control Number 2060–0433; expiration date July 31, 2003.

(10) *NSPS Subpart PPP and NESHAP–MACT Subpart NNN:* NSPS for Wool Fiberglass Insulation Manufacturing Plants (40 CFR part 60, subpart PPP) and NESHAP–MACT for Wool Fiberglass Manufacturing Plants (40 CFR Part 63, Subpart NNN); Gregory Fried of the Office of Compliance at (202) 564–7016 or via e-mail at *fried.gregory@epa.gov;* EPA ICR Number 1160.07; OMB Control Number 2060–0114; expiration date July 31, 2003.

(11) *NESHAP–MACT Subpart II:* NESHAP for Shipbuilding and Ship Repair Facilities—Surface Coating (40 CFR part 63, subpart II); Steven Hoover of the Office of Compliance at (202) 564–7007 or via e-mail at *hoover.steven@epa.gov;* EPA ICR Number 1712.04; OMB Control Number 2060–0330; expiration date August 31, 2003.

(12) *NESHAP–MACT Subpart KK:* NESHAP for the Printing and Publishing Industry (40 CFR part 63, subpart KK); Sharie Centilla of the Office of Compliance at (202) 564–0697 or via e-mail at *centilla.sharie@epa.gov;* EPA ICR 1739.04; OMB Control Number 2060–0335; expiration date September 30, 2003.

(13) *NESHAP–MACT Subpart M:* NESHAP for Perchloroethylene Dry Cleaning Facilities (40 CFR part 63, subpart M); Joyce Chandler of the Office of Compliance at (202) 564–7073 or via e-mail at *chandler.joyce@epa.gov;* OMB Control Number 2060–0234; EPA ICR Number 1415.05; expiration date September 30, 2003.

(14) *NSPS Subpart MM:* NSPS for Automobile and Light Duty Truck Surface Coating Operations (40 CFR part 60, subpart MM); Steven Hoover of the Office of Compliance at (202) 564–7007 or via e-mail at *hoover.steven@epa.gov;* EPA ICR Number 1064.10; OMB Control Number 2060–0034; expiration date September 30, 2003.

Section C: Summaries of Individual ICRs

(1) *NESHAP Subpart E:* NESHAP for Mercury (40 CFR part 61, subpart E); EPA ICR Number 0113.08, OMB Control Number 2060–0097; expiration date June 30, 2003.

Affected Entities: Entities potentially affected by this action are stationary sources that process mercury ore to recover mercury, use mercury chlor-alkali cells to produce chlorine gas and alkali metal hydroxide, and incinerate or dry wastewater treatment plant sludge.

Abstract: 40 CFR part 61, subpart E, was proposed on December 7, 1971, promulgated on April 6, 1973, and amended on October 14, 1975, and March 19, 1987. This NESHAP requires initial notifications, performance tests, and periodic reports by affected entities. The monitoring, recordkeeping, and reporting requirements outlined in this standard are similar to those required for other NESHAP regulations. Affected sources must demonstrate compliance with the emission standards by monitoring their control devices and performing annual emission testing. Affected sources are also required to submit one-time notifications of startup; a one-time report on performance test results; an initial report specifying the intended methods of compliance including a plan-specific monitoring plan, if it applies; and a semiannual report that includes a summary of the monitoring results. Sources must maintain records of emission test results, sludge sampling data, leaks, spills, process/control device parameters, and occurrences where the monitoring system is malfunctioning or inoperative.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 142 with 24 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 26,504 hours. On the average, each respondent reported 0.16 times per year and 1,104 hours were spent preparing each response. There were no capital/startup costs or operation and maintenance costs associated with continuous emission monitoring in the previous ICR.

(2) *NSPS Subpart KK:* NSPS for Lead Acid Battery Manufacturing (40 CFR part 60, subpart KK); EPA ICR Number 1072.07; OMB Control Number 2060–0081; expiration date June 30, 2003.

Affected Entities: Entities potentially affected by this action are lead acid battery manufacturing plants with production capacity that is equal to or exceeds 6.5 tons of lead having one or more of the following operations: grid casting, paste mixing, three-process operation, lead-oxide manufacturing, lead reclamation, and other lead-emitting operations.

Abstract: 40 CFR part 60, subpart KK, was proposed on January 14, 1980, and promulgated on April 16, 1982. This NSPS requires initial notifications, performance tests, and periodic reports. In addition, owners or operators of the subject facilities must maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which a monitoring system is inoperative. Specific monitoring requirements include information on the operation of the scrubber device and compliance with the particulate matter and opacity standards.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 82 with 82 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 123 hours. On the average, each respondent reported once

per year, and 1.5 hours were spent preparing each response. There were no capital/startup costs associated with the continuous monitoring system (CMS) in the previous ICR. However, CMS are used to comply with the reporting and recordkeeping requirements of the standard. The annual operation and maintenance costs for CMS in the previous ICR were estimated to be $18,000. This is based on the assumption that 20 of the 82 existing sources have CMS for their scrubber systems at an annual cost of $900 per source.

(3) *NSPS Subpart L:* NSPS for Secondary Lead Smelters (40 CFR part 60, subpart L); EPA ICR Number 1128.07; OMB Control Number 2060–0080; expiration date June 30, 2003.

Affected Entities: Entities potentially affected by this action are any pot furnace of more than 250 kg charging capacity, blast (cupola) furnaces, and reverberatory furnaces in secondary lead smelters.

Abstract: 40 CFR part 60, subpart L, was proposed on June 11, 1973 and promulgated on March 8, 1974. This NSPS requires initial notifications, performance tests, and periodic reports. In addition, owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which a monitoring system is inoperative.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 23 with 23 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 35 hours. On the average, each respondent reported once per year and 1.5 hours were spent preparing each response. There were no capital/startup costs or operation and maintenance costs associated with the continuous emission monitoring in the previous ICR.

(4) *NSPS Subparts T, U, V, W and X:* Standards of Performance for New Stationary Sources for Phosphate Fertilizer Industry (40 CFR part 60, subparts T, U, V, W, X); EPA ICR Number 1061.09; OMB Control Number 2060–0037; expiration date June 30, 2003.

Abstract: Under 40 CFR part 60, subparts T, U, V, W, X, owners/operators of phosphate fertilizer plants and phosphate bearing feed operations must notify the Agency of construction, modification, startups, shutdowns, malfunctions, and dates and results of the initial performance test. Owners/operators must also install, calibrate, and maintain monitoring devices to continuously measure and record the pressure drop across the scrubbers. Recordkeeping includes the occurrence and duration of all startups and malfunctions; initial performance tests results; amount of phosphate feed material; equivalent calculated amounts of phosphorus pentoxide; and pressure drops across scrubber systems. Startups, shutdowns and malfunctions must be recorded as they occur. Performance test records must contain information necessary to determine conditions of performance test and performance test measurements. Equivalent phosphorus pentoxide stored or amount of feed must be recorded daily. Continuous monitoring systems (CMSs) record the pressure drop across scrubbers continuously and automatically. Reporting includes initial notifications and performance test results.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 11 with 11 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 963 hours. On the average, each respondent reported once per year and 87.5 hours were spent preparing each response. There were no capital/startup costs or operation and maintenance costs associated with the continuous emission monitoring in the previous ICR.

(5) *NSPS Subparts AA and AAa:* NSPS for Steel Plants—Electric Arc Furnaces and Argon Oxygen Decarbonization Vessels (40 CFR part 60, subparts AA and AAa); EPA ICR Number 1060.11; OMB Control Number 2060–0038; expiration date June 30, 2003.

Affected Entities: Entities potentially affected by this action are electric arc furnaces, argon-oxygen decarburization (AOD) vessels, and dust handling systems at steel plants (minimills) that produce carbon, alloy, or specialty steels.

Abstract: 40 CFR part 60, subparts AA and AAa, were proposed on October 21, 1974 and promulgated on September 23, 1975 respectively. A review of Subpart AA in 1980 resulted in the promulgation of a new standard (Subpart AAa). Subpart AAa was proposed on August 17, 1983 and promulgated on October 31, 1984. On March 2, 1999, the Agency proposed a direct final rule to amend Subparts AA and AAa to add alternative requirements for monitoring in response to recommendations made by the Common Sense Initiative subcommittee on iron and steel. This NSPS requires initial notifications, performance tests, and periodic reports. In addition, owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 90 with 182 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 48,413 hours. On the average, each respondent reported twice per year and 266 hours were spent preparing each response.

The number of sources in the previous ICR is based on the number of the electric arc furnaces constructed prior to the 1974 Subpart AA cutoff date. It was also assumed that two additional sources became subject to the standard during the three-year ICR approval cycle. In the most previously approved ICR, there are continuous monitoring system (CMS) capital/startup costs associated with the two new affected facilities at a total cost of $27,600. It is assumed that new sources will not have to purchase continuous opacity monitors. Also, it is estimated that ten percent of the existing sources will have annual operation and maintenance costs associated with continuous opacity monitors at a cost of $66,750.

(6) *NSPS Subpart OOO:* NSPS for Nonmetallic Mineral Processing (40 CFR part 60, subpart OOO); EPA ICR Number 1084.07; OMB Control Number 2060–0050; expiration date June 30, 2003.

Affected Entities: This standard applies to owners or operators of new, modified, or reconstructed facilities at nonmetallic mineral processing plants that commenced construction, modification, or reconstruction after August 1, 1985. Nonmetallic mineral processing includes the following: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, and enclosed truck or railcar loading station. This standard does not apply to facilities located in underground mines; stand-alone screening operations; operations that only involve recycled asphalt; fixed sand gravel, crushed stone plants with capacities of 25 tons per hour or less; portable sand, gravel, or crushed stone plants with capacities of 150 tons per hour or less; common clay or pumice plants with capacities of 10 tons per hour or less. In addition, when an existing facility is replaced by a piece of equipment of equal or smaller size, it is

not subject to the standard until all facilities in a production line are replaced. Affected facilities in the plant process that are subject to 40 CFR part 60, subpart F, for Portland Cement NSPS, or Subpart I, Asphalt Concrete Plants NSPS, are not subject to this NSPS.

Abstract: Respondents subject to 40 CFR part 60, subpart OOO, must submit the following one-time-only reports: notification of the date of construction or reconstruction, notification of the actual date of initial startup, notification of any physical or operational change to an existing facility that may increase the regulated pollutant emission rate, notification of demonstration of the continuous monitoring system (CMS) where the CMS is required (*e.g.*, wet scrubber), notification of the date of the initial performance test, and the results of the initial performance test. Wet mining/screening operations are exempt from all requirements of the regulation, except an initial report and record describing the location of these operations. The requirement to submit a notification of the anticipated date of initial startup is waived for respondents subject to this standard.

Respondents are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the CMS is inoperative. Owners or operators of facilities using a wet scrubber must record the measurements of both the change in pressure of the gas stream across the scrubber and the scrubbing liquid flow rate and submit semiannual reports for exceedances.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 4,305 with 2,320 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 31,746 hours. On the average, each respondent reported 0.5 times per year and 14 hours were spent preparing each response. There were no capital/startup costs or operation and maintenance costs associated with continuous emission monitoring in the previous ICR.

(7) *NSPS Subpart FFF:* NSPS for Flexible Vinyl and Urethane Coating and Printing (40 CFR part 60, subpart FFF); EPA ICR Number 1157.07; OMB Control Number 2060–0073; expiration date June 30, 2003.

Affected Entities: Entities potentially affected by this action are owners or operators of rotogravure printing lines used to print or coat flexible vinyl or urethane products, and for which construction, modification or reconstruction commenced after the date of proposal.

Abstract: 40 CFR part 60, subpart FFF, was proposed on January 18, 1983, and promulgated on June 29, 1984. This NSPS requires initial notifications, performance tests, and periodic reports. In addition, owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to this standard provide information on the operation of emissions control devices. Semiannual reports of excess emissions or exceedances of standards are also required.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 10 with 21 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 329 hours. On the average, each respondent reported twice per year and 16 hours were spent preparing each response.

The annual reporting and recordkeeping cost burden for this ICR was estimated at $52,000 that includes $7,000 for capital/startup costs, and $45,000 for operation and maintenance costs.

(8) *NSPS Subpart TTT:* NSPS for the Surface Coating of Plastic Parts for Business Machines (40 CFR part 60, subpart TTT); EPA ICR Number 1093.07; OMB Control Number 2060–0162; expiration date July 31, 2003.

Affected Entities: Entities potentially affected by this action are facilities in industrial surface coating operations that apply coatings to plastic parts for use in the manufacture of business machines including each spray booth that applies prime coats, color coats, texture coats or touch-up coats.

Abstract: 40 CFR part 60, subpart TTT, was proposed on January 8, 1986 and promulgated on January 29, 1988. This NSPS requires initial notifications, performance tests, and periodic reports. In addition, owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. Performance test reports are needed to demonstrate a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved. Quarterly and semiannual reports are used for problem identification, as a check on source operation, and maintenance and for compliance determinations.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 41 with 121 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 3,639 hours. On the average, each respondent reported three times per year and 30 hours were spent preparing each response. There were no capital/startup costs or operation and maintenance costs associated with continuous emission monitoring in the previous ICR. One additional new source per year is expected to become subject to the regulation in the next three years.

(9) *NESHAP–MACT Subpart RRR:* NESHAP–MACT for Secondary Aluminum Production (40 CFR part 63, subpart RRR); EPA ICR Number 1894.03; OMB Control Number 2060–0433; expiration date July 31, 2003.

Affected Entities: Entities potentially affected by this action are owners or operators of existing secondary aluminum production facilities. The standard applies to component processes at these facilities: aluminum scrap shredders, thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, secondary aluminum processing units composed of in-line fluxers and process furnaces (including both melting and holding furnaces of various configurations), sweat furnaces, dross-only furnaces, and rotary dross coolers.

Abstract: 40 CFR part 63, subpart RRR, was proposed on February 11, 1999 and promulgated on March 23, 2000. On September 14, 2000, the Agency proposed the removal of aluminum foundries and aluminum die casting facilities from the secondary aluminum production source category. On June 14, 2002, the Agency published amendments to the standards to clarify compliance dates and defer certain early compliance obligations.

The monitoring, recordkeeping, and reporting requirements outlined in the standard are similar to those required for other NESHAP regulations. Respondents must submit one-time notifications of applicability and reports on initial performance test results. Plants must develop and implement a startup, shutdown, and malfunction plan and submit semiannual reports of any event when the plan was not followed. Respondents must also

develop and implement an operation, maintenance, and monitoring plan covering each affected source and each emission control device used for compliance with the standard. Semiannual reports for periods of operation during which the monitoring parameter ranges established during the initial compliance test are exceeded, or reports certifying that no exceedances have occurred also are required.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 887 with 2,315 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 148,031 hours. On the average, each respondent reported 2.6 times per year and 64 hours were spent preparing each response.

The total capital and startup costs annualized over its expected useful life are approximately $687,000. The total annualized capital/startup costs are approximately $535,000, and the total annualized operation and maintenance costs are approximately $152,000.

(10) *NSPS Subpart PPP and NESHAP–MACT Subpart NNN:* NSPS for Wool Fiberglass Insulation Manufacturing Plants (40 CFR part 60, subpart PPP), and NESHAP–MACT for Wool Fiberglass Manufacturing Plants (40 CFR part 63, subpart NNN); EPA ICR Number 1160.07; OMB Control Number 2060–0114; expiration date July 31, 2003.

Affected Entities: Entities potentially affected by the NSPS standard are each rotary spin wool fiberglass insulation manufacturing line located at a wool fiberglass insulation manufacturing plant. Entities potentially affected by the NESHAP–MACT standard are glass-melting furnaces, rotary spin manufacturing lines that produce bonded building insulation, and flame attenuation manufacturing lines producing bonded pipe insulation located at wool fiberglass manufacturing plants.

Abstract: 40 CFR part 60, subpart PPP, applies to each rotary spin wool fiberglass insulation manufacturing line for which construction, modification or reconstruction commenced after February 2, 1984.

This NSPS requires initial notifications, performance tests, and periodic reports. In addition, owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Owners or operators must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility that may increase the regulated pollutant emission rate; and the notification of the date of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility.

Recordkeeping requirements specific to wool fiberglass insulation manufacturers include continuous measurements of control device operating parameters. When a wet scrubbing control device is used, the owner or operator of an affected facility must measure the gas pressure drop across each scrubber and the scrubbing liquid flow rate to each scrubber no less than once every four hours. Owners or operators who comply using a wet electrostatic precipitator control device must measure the primary and secondary current and voltage in each electrical field and the inlet water flow rate no less than once every four hours.

The reporting requirements for this industry include the initial notifications listed, the initial performance test results, and semiannual reports of excess emissions.

The NESHAP–MACT rule requires initial notifications, performance tests, and periodic reports. In addition, owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. 40 CFR 63.1386 of the final rule specifies additional records to be kept by owners or operators of wool fiberglass manufacturing plants including: (1) Bag leak detection system alarm activations; (2) electrostatic precipitator (ESP) parameter values; (3) air temperature measurements above the molten glass in an uncontrolled cold top electric furnace; (4) uncontrolled glass-melting furnace (that is not a cold top electric furnace) parameter values used to monitor furnace performance; (5) the loss-on-ignition and product density for each bonded product manufactured on a rotary spin (RS) or flame attenuation (FA) manufacturing line; (6) the free formaldehyde content of each resin shipment received and used in binder formulation, and the binder formulation of each batch; (7) process parameter levels for RS and FA manufacturing lines that use process modifications to comply with the emission standards; (8) scrubber pressure drop, scrubbing liquid flow rate, and any chemical additives; (9) incinerator operating temperatures and results of the periodic inspection of incinerator components; and (10) the glass pull rate, including any period when the pull rate exceeds the average pull rate established during the performance test by more than 20 percent.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 20 with 128 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 19,098 hours. On the average, each respondent reported 6.4 times per year and 149 hours were spent preparing each response.

The total capital and startup costs annualized over its expected useful life are approximately $689,000. The total annualized capital/startup costs are approximately $485,000, and the total annualized operation and maintenance costs are approximately $204,000. It is estimated that no additional sources will become subject to the standard over the next three years.

(11) *NESHAP–MACT Subpart II:* NESHAP for Shipbuilding and Ship Repair Facilities—Surface Coating (40 CFR Part 63, Subpart II); EPA ICR Number 1712.04; OMB Control Number 2060–0330; expiration date August 31, 2003.

Affected Entities: Entities potentially affected by this action are all new and existing shipbuilding and repair facilities that are major sources of hazardous air pollutants.

Abstract: 40 CFR part 63, subpart II, was proposed on December 6, 1994 and promulgated on December 15, 1995. Owners or operators of shipbuilding and ship repair facilities to which this regulation is applicable must choose one of the four compliance options described in the final rule or install and monitor a specific control system to control coating emissions and reduce Hazardous Air Pollutant (HAP) emissions to the compliance level. This NESHAP requires initial notifications, performance tests, and periodic reports. In addition, owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Also, respondents are required to submit with the initial notification an implementation plan that describes the coating compliance procedures; recordkeeping procedures; and transfer, handling, and storage procedures that the source intends to

use. Respondents choosing any of the four compliance options described in the final rule must record the following: the total volume of coating applied at the source to ships; the volume of each low-usage-exempt coating applied; the identities of the coatings used, the appropriate coating categories, and applicable volatile organic hazardous air pollutant limit; the content certifications for each batch of coating; a determination of whether containers meet the standards; and the results of any Method 24 or approved test conducted on individual containers of coating, as applied.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 45 with 45 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 22,149 hours. On the average, each respondent reported once per year and 492 hours were spent preparing each response. There were no capital/startup costs or operation and maintenance costs associated with continuous emission monitoring in the previous ICR. One additional new source per year is expected to become subject to the regulation over the next three years.

(12) *NESHAP–MACT Subpart KK:* NESHAP for the Printing and Publishing Industry (40 CFR part 63, subpart KK); EPA ICR 1739.04; OMB Control Number 2060–0335; expiration date September 30, 2003.

Affected Entities: Entities potentially affected by this action are owners or operators of publication rotogravure, product and packaging rotogravure, and wide-web flexographic printing presses at major sources, existing or commencing construction or reconstruction after the effective date of this Subpart.

Abstract: 40 CFR part 63, subpart KK, was proposed on March 14, 1995 (60 FR 13664) and promulgated on May 30, 1996 (61 FR 27131). This NESHAP requires initial notifications, performance tests, and periodic reports. In addition, owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to this standard provide information on the operation of the emissions control device and compliance with the opacity limit.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 135 with 273 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 52,495 hours. On the average, each respondent reported twice per year and 192 hours were spent preparing each response.

The total capital and startup costs annualized over its expected useful life are approximately $403,000. The total annualized capital/startup costs are approximately $7,000, and the total annualized operation and maintenance costs are approximately $396,000. It is estimated that one source per year will become subject to the standard over the next three years.

(13) *NESHAP–MACT Subpart M:* NESHAP for Perchloroethylene Dry Cleaning Facilities (40 CFR part 63, subpart M); OMB Control Number 2060–0234; EPA ICR Number 1415.05; expiration date September 30, 2003.

Affected Entities: Entities potentially affected by this action are those owners or operators of dry cleaning facilities using perchloroethylene (PCE) as a solvent.

Abstract: Sources subject to 40 CFR part 63, subpart M must submit certain records and reports to enable the Agency to identify facilities that may not be in compliance with the standard. Monitoring is conducted on a weekly basis to ensure that the emission control devices are being properly operated and maintained on a continuous basis to reduce vented PCE emissions, and leak detection and repair are conducted on a weekly basis to reduce fugitive PCE emissions. The required records indicate whether the facilities are operating and maintaining equipment properly to control vented emissions, and whether transfer emissions and other fugitive emissions are being properly controlled. To minimize the burden, much of the information that the Agency requires is recorded and retained on-site at the facility. Such information is reviewed by enforcement personnel during inspections and does not need to be routinely reported to the Agency. Records that must be maintained include the solvent purchased each month, yearly PCE consumption, weekly or biweekly inspections, dates of repair or purchase orders, monitoring and initial report requirements. In addition, sources must report on facility status change to a major source and exceedances of the low solvent consumption exemption level.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 25,090 with 5,270 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 1,212,129 hours. On the average, each respondent reported 0.21 times per year and 230 hours were spent preparing each response.

The total capital and startup costs annualized over its expected useful life are approximately $47,000. The total annualized capital/startup costs are zero, and the total annualized operation and maintenance costs are approximately $47,000.

(14) *NSPS Subpart MM:* NSPS for Automobile and Light Duty Truck Surface Coating Operations (40 CFR part 60, subpart MM); EPA ICR Number 1064.10; OMB Control Number 2060–0034; expiration date September 30, 2003.

Affected Entities: Entities potentially affected by this action are the following automobile and light duty truck assembly plant lines: each prime coat operation, guide coat operation, and top coat operation commencing construction, modification or reconstruction after October 5, 1979.

Abstract: 40 CFR part 60, subpart MM, was proposed on October 5, 1979 and promulgated on December 24, 1980 (45 FR 85415). This NSPS requires initial notifications, performance tests, and periodic reports. In addition, owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

The control of emissions from automobile and light duty truck coating operations requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. Performance test reports are needed as these are the Agency's records of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved. When thermal or catalytic incineration is performed, the owner or operator shall keep records of each three-hour period during which the incinerator temperature averaged more than 28 degrees centigrade below the temperature of the most recent performance test, and when the average temperature difference across the catalyst bed is less than 80% of the average temperature difference recorded during the most recent performance test. The semiannual reports are used for problem identification, as a check on

source operation and maintenance, and for compliance determinations.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 45 with 171 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 145,599 hours. On the average, each respondent reported 3.8 times per year and 851 hours were spent preparing each response.

The total capital and startup costs annualized are approximately $7,000, the total annualized capital/startup costs are $2,000 and the total annualized operation and maintenance costs are approximately $5,000.

Dated: September 17, 2002.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 02–24493 Filed 9–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7383–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting Requirements Under EPA's Water Alliances for Voluntary Efficiency (WAVE) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Reporting Requirements Under EPA's Water Alliances for Voluntary Efficiency (WAVE) Program, EPA ICR Number 1654.04, OMB Control Number 2040–0164, expiring March 31, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 25, 2002.

ADDRESSES: Environmental Protection Agency, Office of Wastewater Management, WAVE ICR Docket, Municipal Assistance Branch (Mail Code 4204M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Interested persons may obtain a copy of the ICR amendment and supporting analysis without charge by contacting the individual listed below.

FOR FURTHER INFORMATION CONTACT: Valerie Martin, Telephone: (202) 564–0623. Facsimile Number: (202) 501–2396. e-mail: *martin.valerie@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments: Comments shall be submitted to WAVE ICR Comment Clerk, Mail Code 4204M, Environmental Protection Agency, Office of Wastewater Management, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed stamped envelope. Comments may also be submitted electronically to *martin.valerie@epa.gov.*

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by use of the words ''WAVE ICR Comments.'' No Confidential Business Information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in Corel WordPerfect 9 format or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries. The record for this proposed ICR renewal has been established in the Office of Wastewater Management, Municipal Assistance Branch and includes supporting documentation as well as printed, paper versions of electronic comments. It does not include any information claimed as CBI. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Municipal Assistance Branch, EPA East Building, Room 7220–C, 1201 Constitution Avenue, NW., Washington, DC 20004. For access to the docket materials, please call (202) 564–0623 to schedule an appointment.

Affected entities: Entities potentially affected by this action are commercial businesses, medical facilities, educational institutions, state and local governments, and multi-family housing units that voluntarily join EPA's WAVE Program. Major respondents are lodging establishments, office buildings, educational institutions, medical facilities, and state and local governments.

Title: Reporting Requirements Under EPA's Water Alliances for Voluntary Efficiency (WAVE) Program (OMB Control No. 2040–0164; EPA ICR No. 1654.04) expiring March 31, 2003.

Abstract: EPA initially collects facility information and thereafter annually collects water, energy, and cost savings information from participants in the WAVE program. WAVE Partners are commercial businesses or institutions that voluntarily agree to implement cost-effective water efficiency measures in their facilities. Initially the WAVE Program targeted the lodging industry, but now includes office buildings, educational institutions and medical facilities. Another type of participant, ''Supporters,'' works with EPA to promote water efficiency. Supporters are equipment manufacturers, water management companies, utilities, state and local governments, and the like.

The purpose of the WAVE Program is pollution prevention. EPA and the Pollution Prevention Act define pollution prevention as ''source reduction,'' and other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or through protection of natural resources by conservation. By promoting water efficiency, WAVE prevents pollution in two basic ways. First, wastewater flows are reduced which can increase treatment efficiency at wastewater treatment plants resulting in reduced pollutant loads. Second, less water used means that less energy will be used to treat, transport, and heat drinking water and to transport and treat wastewater. To the extent that the reduced energy use so achieved is electrical energy, power plant emissions are reduced. Water efficiency also causes less water to be withdrawn and helps preserve streamflow to maintain a healthy aquatic environment; in addition, less pumping of groundwater lowers the chance that pollutants that may be in the groundwater will be drained into a water supply well.

EPA uses the information to maintain a profile of program membership and to monitor the success of the program, demonstrate that pollution prevention can be accomplished with a non-regulatory approach, and to promote the program to potential partners. Participation in the WAVE Program is voluntary; however, a participant joins the program by signing and submitting a Membership Agreement and an annual Results Report to EPA to receive and retain program benefits, such as software and publicity. No participant is required to submit confidential business information. EPA maintains and distributes a list of program participants, and presents aggregated data only in its program progress reports. 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 49 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average three hours and three minutes per Membership Agreement response, a one-time submission, and five hours and 54 minutes per Results Report response, an annual submission. Approximately 136 facilities will be subject to this information collection for a total estimated annual burden of 389 hours, and a total estimated annualized cost burden of $28,974. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 18, 2002.

Richard T. Kuhlman,

Acting Director, Office of Wastewater Management.

[FR Doc. 02–24495 Filed 9–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7383–8]

California State Motor Vehicle Pollution Control Standards; LEVII Amendments, 1999 ZEV Amendments, and 2001 ZEV Amendments; Correction Notice Regarding Scope of EPA's Consideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to its Low-Emission Vehicle (LEV) regulations including amendments to its exhaust emission standards, evaporative emission standards, its certification requirements, and to its Zero-Emission Vehicle (ZEV) program (collectively the ''LEVII amendments,'' with the subset pertaining to ZEVs referred to as the ''1999 ZEV amendments''). On May 21, 2002 EPA announced an opportunity for public hearing and comment on the 1999 ZEV amendments and the remainder of the LEVII amendments (67 FR 35809). On June 5, 2002 EPA also announced an opportunity for public hearing and comment on CARB's 2001 ZEV amendments (67 FR 38652). On June 24, 2002 (67 FR 42556) EPA rescheduled the hearing from June 20, 2002 to July 11, 2002 and the written comment period closure date from July 22, 2002 to August 12, 2002. By today's notice EPA is announcing that it is no longer considering CARB's 1999 and 2001 ZEV amendments within the context of this waiver proceeding and EPA no longer seeks written comments on these ZEV amendments. In addition, EPA is offering an additional opportunity for written comment on limited portions of CARB's LEVII amendments, to the extent they apply to hybrid-electric vehicles (HEVs), for which CARB still seeks EPA's waiver consideration. EPA is not seeking further comment or extending the comment period on CARB's LEVII amendments except to the extent such amendments may be affected by the limited portions pertaining to HEVs.

DATES: Any party may submit written comments by October 28, 2002.

ADDRESSES: . All comments and materials relevant to today's action are contained in Public Docket No. A–2002–11 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Dockets may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566–1742 and by facsimile at (202) 566–1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Certification and Compliance Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460. Telephone: (202)564–9256, Fax: (202) 565–2057, e-mail address: *Dickinson.David@EPA.GOV*.

SUPPLEMENTARY INFORMATION: On July 1, 2002, CARB submitted a letter to EPA withdrawing its pending requests for confirmation that its 1999 and 2001 regulatory amendments pertaining to ZEVs are within the scope of previous EPA waivers of federal preemption. EPA immediately placed CARB's July 1, 2002 letter in the Air Docket, and informed interested parties that EPA was no longer considering CARB's 1999 and 2001 ZEV amendments as part of EPA's LEVII waiver proceeding and that EPA's July 11, 2002 LEVII waiver hearing would not pertain to the 1999 and 2001 ZEV amendments. On August 1, 2002, and August 16, 2002, CARB submitted additional letters to EPA clarifying its July 1, 2002 letter and statements made by CARB at EPA's July 11, 2002 LEVII waiver hearing wherein CARB had indicated a desire to retain limited portions of the 1999 ZEV amendments within the LEVII waiver consideration. As a result of CARB's communications EPA is no longer considering the ZEV elements contained in the 1999 and 2001 ZEV amendments. Specifically, per CARB's request EPA is not considering any of CARB's 2001 ZEV amendments which are those referenced in CARB's letter to EPA dated May 21, 2002 and include amendments to CARB's ZEV program requirements and ZEV credit provisions. In addition, EPA is not considering any of the 1999 ZEV amendments which are those referenced in CARB's letter dated August 16, 2002 and include the ZEV program and credit provisions (adoption of 13 CCR section 1962), the structural changes to 13 CCR section 1960.1(g)(1), section 1960.1(g)(2), section 1960.1(h)(2), and certain changes pertaining to ZEVs in CARB's document incorporated in section 1960.1(k) entitled ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' (''Original LDV/MDV Standards and

Test Procedures''). CARB's LEVII amendments moved all of the provisions on ZEVs that had been in the Original LDV/MDV Standards and Test Procedures into a new document entitled ''California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission vehicles, and 2001 and Subsequent Model Hybrid Electric Vehicles, In the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes' (''the ZEV/HEV Standards and Test Procedures'') which was incorporated in 13 CCR section 1962(e). The portions of the ZEV/HEV Standards and Test Procedures that pertain to HEVs are incorporated by 13 CCR sections 1960.1(k) and 1961(d) and are used for determining whether HEVs comply with the applicable low-emission vehicle standards. EPA, per CARB's request, is not considering the adoption of the ZEV provisions found at section C and sections E.1, 4, and 5 (these sections are only ZEV related) of the ZEV/HEV Standards and Test Procedures nor is EPA considering sections A, B, D, and E. 2 and 3 to the extent that they pertain to ZEVs (to the extent they pertain to HEVs, EPA is considering them under the current waiver consideration and invites comment by today's notice since some parties may have considered the HEV provisions included in CARB's withdrawal of the ZEV amendments). Sections E.6–E.9 of the ZEV/HEV Standards and Test Procedures apply to HEVs only and EPA also invites comment on such sections. Thus by today's notice EPA intends to clarify that CARB is not seeking waiver consideration at this time of any of the 1999 ZEV amendments nor is CARB seeking waiver consideration of any of the 2001 ZEV amendments and EPA is limiting its waiver consideration accordingly.

Dated: September 19, 2002.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 02–24496 Filed 9–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7383–5]

Anniston PCB Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into an administrative settlement with Pharmacia Corporation (p/k/a Monsanto Company) and Solutia Inc. for response costs pursuant to section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Anniston PCB Superfund Site (Site) located in Anniston, Calhoun County, Alabama. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4, (WMD–CPSB), 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: September 9, 2002.

James T. Miller,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–24494 Filed 9–25–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 16, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 25, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0718.

Title: Part 101, Governing the Terrestrial Microwave Fixed Radio Service.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 20,489.

Estimate Time per Response: 0.5 to 1.77 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 1,609 hours.

Total Annual Costs: $90,624.

Needs and Uses: Sections 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. Section 310, require applicants and licensees who operate stations in the public and private operational fixed services to meet certain technical, legal, and other qualifications and to comply with station ownership and transfer restrictions.

OMB Control Number: 3060–0740.

Title: Section 95.1015, Disclosure Policies.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 203.

Estimate Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 203 hours.

Total Annual Costs: $10,000.

Needs and Uses: Amendments to the Commission's Rules governing Low Power Radio and Automated Maritime Telecommunications System (AMTS) operations in the 216–217 MHz band require manufacturers of low power radio service (LPRS) equipment to include a statement covering the use of the equipment to ensure that television stations, which may be effected, are made aware of the location of potential harmful interference from AMTS operations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–24422 Filed 9–25–02; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02–150; FCC 02–260]

Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In the document, the Federal Communications Commission (Commission) grants the section 271 application of BellSouth Corporation, *et al.* (BellSouth) for authority to enter the interLATA telecommunications market in the states of Alabama, Kentucky, Mississippi, North Carolina, and South Carolina. The Commission grants BellSouth's application based on its conclusion that BellSouth has satisfied all of the statutory requirements for entry, and opened its local exchange markets to full competition.

DATES: Effective September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Aaron Goldberger, Attorney-Advisor, Wireline Competition Bureau, at (202) 418–1591 or via the Internet at *agoldber@fcc.gov.* The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in WC Docket No. 02–150, FCC 02–260, adopted September 18, 2002, and released September 18, 2002. The full text of this order may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's Web site at *http://www.fcc.gov/Bureaus/*Wireline_Competition/in-region_applications.

Synopsis of the Order

1. *History of the Application.* On June 20, 2002, BellSouth filed an application, pursuant to section 271 of the Telecommunications Act of 1996, with the Commission to provide in-region, interLATA service in the states of Alabama, Kentucky, Mississippi, North Carolina, and South Carolina.

2. *The State Commissions' Evaluations.* The Alabama Public Service Commission (Alabama Commission), the Kentucky Public Service Commission (Kentucky Commission), the Mississippi Public Service Commission (Mississippi Commission), the North Carolina Utilities Commission (North Carolina Commission), and the South Carolina Public Service Commission (South Carolina Commission) (collectively, state commissions), following an extensive review process over a number of years, advised the Commission that BellSouth had met the checklist requirements of section 271 and has taken the statutorily required steps to open its local markets in each state to competition. Consequently, the state commissions recommended that the Commission approve BellSouth's in-region, interLATA entry in their evaluations and comments in this proceeding.

3. *The Department of Justice's Evaluation.* The Department of Justice filed its evaluation of BellSouth's application on July 30, 2002. It recommended approval of the application subject to the Commission's review of, among other things, BellSouth's change management process for operations support systems (OSS). The Department of Justice stated that BellSouth had made substantial progress in addressing issues that it had previously identified.

Primary Issues in Dispute

4. *Compliance with Section 271 (c) (1) (A).* The Commission concludes that BellSouth demonstrates that it satisfies the requirements of section 271 (c)(1)(A) based on the interconnection agreements it has implemented with competing carriers in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina. The record demonstrates that competitive LECs serve some business and residential customers using predominantly their own facilities in each of the states.

5. *Checklist Item 2—Unbundled Network Elements.* Based on the record, the Commission finds that BellSouth has provided ''nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)'' of the Act in compliance with checklist item 2.

6. The Commission finds that BellSouth's UNE rates in each of the five states are just, reasonable, and nondiscriminatory, and are based on cost plus a reasonable profit as required by section 252(d)(1). Thus, BellSouth's UNE rates in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina satisfy checklist item 2. The Commission has previously noted that different states may reach different results that are each within the range of what a reasonable application of TELRIC would produce. After reviewing commenters criticism of loop rate issues, switching rate issues, Daily Usage File (DUF) rates, and BellSouth's non-recurring OSS charge, the Commission concludes that the state commissions followed basis TELRIC principles and there is insufficient evidence to demonstrate that the state commissions committed clear error.

7. Pursuant to this checklist item, the Commission finds that BellSouth also provides nondiscriminatory access to network elements in a manner that allows other carriers to combine such elements themselves. In addition, BellSouth demonstrates that it provides to competitors combinations of already-combined network elements. Accordingly, BellSouth provides UNEs, including UNE combinations, in the five states in the same manner as the Commission approved in Georgia and Louisiana.

8. The Commission also concludes that BellSouth meets its obligation to provide access to its OSS—the systems, databases and personnel necessary to support network elements or services. Based on the evidence presented in the record, the Commission finds that BellSouth provides nondiscriminatory access to each of the primary OSS

functions (pre-ordering, ordering, provisioning, maintenance and repair, billing, and change management and technical assistance). BellSouth provides access to its OSS in a manner that enables competing carriers to perform the functions in substantially the same time and manner as BellSouth or, if there is not an appropriate retail analogue in BellSouth's systems, in a manner that permits an efficient competitor a meaningful opportunity to compete.

9. Specifically, regarding change management, the Commission finds that, since the *BellSouth Georgia/Louisiana Section 271 Order,* BellSouth has continued to improve the adequacy of its plan by broadening its scope and by increasing the role of competitive LECs in the process. While the Commission finds that problems still exist with respect to BellSouth's adherence to the change management process, the Commission finds those problems—generally, the quality of software releases and the number of change requests awaiting implementation—are not sufficient to warrant a finding of checklist noncompliance.

Other Checklist Items.

10. *Checklist Item 1—Interconnection.* Based on the evidence in the record, the Commission finds that BellSouth demonstrates that it provides interconnection in accordance with the requirements of section 251(c)(2), and as specified in section 271 and applied in the Commission's prior orders. Pursuant to this checklist item, BellSouth must allow other carriers to interconnect their networks to its network for the mutual exchange of traffic, using any available method of interconnection at any available point in BellSouth's network. BellSouth's performance generally satisfies the applicable benchmark or retail comparison standards for this checklist item.

11. *Checklist Item 4—Unbundled Local Loops.* BellSouth demonstrates that it provides unbundled local loops in accordance with the requirements of section 271 and our rules in that it provides ''local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.'' More specifically, BellSouth establishes that it provides access to loop make-up information in compliance with the *UNE Remand Order* and nondiscriminatory access to stand alone xDSL-capable loops and high-capacity loops. Also, BellSouth provides voice grade loops, both as new loops and through hot-cut conversions, in a nondiscriminatory manner. Finally, BellSouth has demonstrated that it has a line-sharing and line-splitting provisioning process that affords competitors nondiscriminatory access to these facilities.

12. *Checklist Item 5—Unbundled Transport.* Section 271(c) (2) (B) (v) of the competitive checklist requires a BOC to provide ''local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.'' The Commission concludes, based upon the evidence in the record, that BellSouth demonstrates that it provides unbundled local transport, in compliance with the requirements of checklist item 5.

13. *Checklist Item 8—White Pages Directory Listings.* Based on the record, the Commission finds that BellSouth provides white page directory listings for customers of the other carrier's telephone exchange service and permits competitive providers of telephone exchange service and toll service to have access to directory listings in compliance with checklist item 8.

14. *Checklist Item 10—Databases and Associated Signaling.* BellSouth has demonstrated that it provides ''nondiscriminatory access to databases and associated signaling necessary for call routing and completion'' in compliance with the requirements of checklist item 10.

15. *Checklist Item 11—Number Portability.* Section 251(b)(2) requires all LECs ''to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' Based on the evidence in the record, we find that BellSouth complies with the requirements of checklist item 11.

16. *Checklist Item 12—Local Dialing Parity.* Based on the evidence in the record, the Commission concludes that BellSouth provides nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3) of the Act in compliance with checklist item 12.

17. *Checklist Items 3, 6, 7, 9, 13 and 14.* An applicant under section 271 must demonstrate that it complies with checklist item 3 (access to poles, ducts, and conduits), item 6 (unbundled local switching), item 7 (911/E911 access and directory assistance/operator services), item 9 (numbering administration), item 13 (reciprocal compensation), and item 14 (resale). Based on the evidence in the record, the Commission concludes that BellSouth demonstrates that it is in compliance with checklist items 3, 6, 7, 9, 13, and 14 in the five states.

18. *Section 272 Compliance.* BellSouth provides evidence that it maintains the same structural separation and nondiscrimination safeguards in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina as it does in Georgia and Louisiana, states in which BellSouth has already received section 271 authority. Therefore, the Commission concludes that BellSouth has demonstrated that it is in compliance with the requirements of section 272.

19. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. It views the public interest requirement as an opportunity to review the circumstances presented by the applications to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. The Commission finds that barriers to competitive entry in the local exchange markets have been removed and that the local exchange markets in each state are open to competition. The Commission also finds that the performance monitoring and enforcement mechanisms developed in each state, in combination with other factors, provide meaningful assurance that BellSouth will continue to satisfy the requirements of section 271 after entering the long distance market.

20. *Section 271(d)(6) Enforcement Authority.* Working with each of the state commissions, the Commission intends to closely monitor BellSouth's post-approval compliance to ensure that BellSouth continues to meet the conditions required for section 271 approval. It stands ready to exercise its various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in each of the states.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–24420 Filed 9–25–02; 8:45 am]

BILLING CODE 6712–01–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. 3501 *et seq.*), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below pursuant to OMB's emergency processing procedures. The FDIC has requested OMB to approve the collection by October 11, 2002.

Type of Review: Emergency processing of a new information collection.

Title: Insured Deposit Survey.

OMB Number: 3064-new.

Annual Burden:

Estimated annual number of respondents: 20.

Estimated time per response: 30 minutes.

Average annual burden hours: 10 hours.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Thomas Nixon, Senior Attorney, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, (202) 898–8766.

Comments: Comments on this collection of information are welcome and should be submitted on or before October 11, 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. FAX number (202) 898–3838; Internet address: *comments@fdic.gov.*

SUPPLEMENTARY INFORMATION: The FDIC Board of Directors is required, semiannually, to set deposit insurance assessment premiums to be paid by insured financial institutions to ensure that the reserve ratio is maintained at the statutorily mandated Designated Reserve Ratio of 1.25 percent. The FDIC Board must next set these premiums in early November 2002. To do this effectively, and without burdening banks with unnecessary insurance premiums, the FDIC needs a timely and reliable measure of estimated insured deposits. The FDIC is able to obtain the necessary information from most banks through the September 30, 2002 ''Call Report,'' an OMB-approved information collection, in time to make its decision on premiums in early November. However, certain banks have the option of submitting their Call Report at a later date, so that their deposit data would not be available until after the FDIC Board has to make its decision. The FDIC is proposing a one-time, early November survey of no more than 20 banks requesting them to provide current estimates of the amounts to be reported in two items in the Call Report that they would be obligated to submit within two weeks of the survey.

Dated: September 20, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–24398 Filed 9–25–02; 8:45 am]

BILLING CODE 6714–01–P

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 *http://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 October 21, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Putnam-Greene Financial Corporation, Eatonton, Georgia; to acquire 100 percent of the voting shars of The Citizens Bank of Cochran, Cochran, Georgia.

Board of Governors of the Federal Reserve System, September 20, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–24399 Filed 9–25–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

SES Performance Review Board

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members to the FTC Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Janet Silva, Director of Human Resources, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2022.

SUPPLEMENTARY INFORMATION: Publication of the Performance Review Board (PRB) membership is required by 5 U.S.C. 4314(c)(4). The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations regarding performance ratings to the Chairman.

The following individuals have been designated to serve on the Commission's Performance Review Board:

Rosemarie A. Straight, Executive Director, Chair.

Howard J. Beales, Director, Bureau of Consumer Protection.

David T. Scheffman, Director, Bureau of Economics.

Christine C. Wilson, Chief of Staff.

Joseph J. Simons, Director, Bureau of Competition.

William E. Kovacic, General Counsel.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–24419 Filed 9–25–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Secretary's Advisory Committee on Regulatory Reform—Cancellation

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of cancellation of meeting.

SUMMARY: This notice announces the *cancellation* of a public meeting of the Department of Health and Human Services (HHS) Secretary's Advisory Committee on Regulatory Reform that was scheduled to be held on Tuesday, October 1, from 9 a.m. to 5 p.m. and on Tuesday, June 11, from 8 a.m. to 3 p.m. This meeting will be rescheduled for a later date. Information about dates, times, and locations for the meeting will be posted in the **Federal Register** and on the Committee Web site at *www.regreform.hhs.gov* once the event has been rescheduled.

FOR FURTHER INFORMATION CONTACT: Margaret P. Sparr, Executive Coordinator, Secretary's Advisory Committee on Regulatory Reform, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Avenue, SW., Room 344G, Washington, DC, 20201, (202) 401–5182.

SUPPLEMENTARY INFORMATION: On June 8, 2001, HHS Secretary Thompson announced a Department-wide initiative to reduce regulatory burdens in health care, to improve patient care, and to respond to the concerns of health care providers and industry, State and local Governments, and individual Americans who are affected by HHS rules. Common sense approaches and careful balancing of needs can help improve patient care. As part of this initiative, the Department established the Secretary's Advisory Committee on Regulatory Reform to provide findings and recommendations regarding potential regulatory changes. These changes would enable HHS programs to reduce burdens and costs associated with departmental regulations and paperwork, while at the same time maintaining or enhancing the effectiveness, efficiency, impact, and access of HHS programs.

Dated: September 20, 2002.

William Raub,

Deputy Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–24433 Filed 9–25–02; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–185]

Availability of Draft Interaction Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of three draft interaction profiles prepared by ATSDR for review and comment.

DATES: To ensure consideration, comments on these draft documents must be received on or before November 30, 2002. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft interaction profiles should be sent to the attention of Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for the draft interaction profiles must be in writing, and must specifically identify the interaction profile(s) that you wish to receive. The documents will be primarily available in pdf files. If you do not have a computer, you can ask for a hard copy. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Interaction profiles will also be available on ATSDR's Web site at *http://www.atsdr.cdc.gov.*

Written comments and other data submitted in response to this notice and the draft interaction profiles should bear the docket control number ATSDR–185. Send one copy of all comments and three copies of all supporting documents to Dr. Hana Pohl, ATSDR, Division of Toxicology, Mailstop E–29, 1600 Clifton Road, Atlanta, Georgia 30333 by the end of the comment period. Because all public comments regarding ATSDR interaction profiles are available for public inspection after the documents are published in final, no confidential business information or other confidential information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (888)422–8737 or (404)498–0720.

SUPPLEMENTARY INFORMATION: These interaction profiles were developed by ATSDR for hazardous substances at Department of Energy (DOE) and National Aeronautics and Space Administration (NASA) waste sites under section 104(i)(3) and (5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This public law mandates that ATSDR shall assess whether adequate information on health effects is available for the priority hazardous substances. Where such information is not available or under development, ATSDR shall, in cooperation with the National Toxicology Program, initiate a program of research to determine these health effects. The Act further directs that where feasible, ATSDR shall develop methods to determine the health effects of substances in combination with other substances with which they are commonly found. The Food Quality Protection Act (FQPA) of 1996 requires that factors to be considered in establishing, modifying, or revoking tolerances for pesticide chemical residues shall include the available information concerning the cumulative effects of substances that have a common mechanism of toxicity, and combined exposure levels to the substance and other related substances. The FQPA requires that the Administrator of the U.S. Environmental Protection Agency consult with the Secretary of the Department of Health and Human Services (which includes ATSDR) in implementing some of the provisions of the act.

To carry out these legislative mandates, ATSDR has developed a chemical mixtures program. As part of the mixtures program, ATSDR developed a guidance manual that outlines the latest methods for mixtures health assessment. In addition, a series of documents called interaction profiles are being developed for certain priority mixtures that are of special concern to

ATSDR. The purpose of an interaction profile is to evaluate data on the toxicology of the ''whole'' priority mixture (if available) and on the joint toxic action of the chemicals in the mixture in order to recommend approaches for the exposure-based assessment of the potential hazard to public health.

Although key studies for each of the mixtures were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft documents will be available to the public on or about, September 1, 2002.

Document 1: Interaction profile for cesium, cobalt, polychlorinated biphenyls, strontium, and trichloroethylene.

Document 2: Interaction profile for arsenic, hydrazines, jet fuels, strontium, trichloroethylene.

Document 3: Interaction profile for cyanide, fluoride, nitrate, and uranium.

All documents issued as ''Drafts for Public Comment'' represent ATSDR's best efforts to provide important toxicological information on interactions of priority hazardous substances. We are seeking public comments and additional information which may be used to supplement these documents. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: September 19, 2002.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 02–24414 Filed 9–25–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–02–81]

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 Anne O'Connor, 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: Impact Evaluation of CDC's Arthritis Physical Activity Campaign: Physical Activity. The Arthritis Pain Reliever—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

Arthritis affects nearly 43 million Americans, or about one in every six people, and is the leading cause of disability among adults in the United States. Because of the broad public health impact of this disease, the Centers for Disease Control and Prevention (CDC) developed the National Arthritis Action Plan in 1998 as a comprehensive approach to reducing the burden of arthritis on the United States.

As part of its efforts to implement the National Arthritis Action Plan, the CDC arthritis program developed a physical activity campaign for people with arthritis (PWA), specifically African American and Caucasian men and women aged 45–64, high school education or less, and annual income less than $35,000 per year. Campaign materials include print ads, 15-, 30- and 60-second radio public service announcements, and desktop displays with brochures for pharmacies, doctors' offices, and community centers. The campaign objectives are to increase target audience members' (1) Beliefs about physical activity as an arthritis management strategy (there are ''things they can do'' to make arthritis better, and physical activity is an important part of arthritis management); (2) Knowledge of the benefits of physical activity and appropriate physical activity for people with arthritis; (3) Confidence in their ability to be physically active, and (4) Trial of physical activity behaviors.

In Spring and Summer 2002, Physical Activity. The Arthritis Pain Reliever is being pilot-tested by 6 CDC-funded arthritis states; eventually materials will be disseminated to all 38 states funded for arthritis programs by CDC. The preliminary pilot tests are focusing on reach and exposure; a more thorough evaluation is necessary to assess impact of the campaign. This in-depth evaluation will be used to guide the public health practice of the 38 CDC-funded state arthritis programs and their partners in determining to what extent the arthritis physical activity campaign has achieved its objectives.

With the help of a contractor skilled in evaluation of health communication campaigns, CDC will conduct an impact evaluation using convenience samples in up to 12 selected geographic areas. The evaluation may include but not be limited to gathering information from the target audiences of (a) people with arthritis, and (b) physicians and other health care professionals through community surveys, in-person and follow-up telephone interviews, intercept interviews, and other quantitative methods recommended by the evaluation contractor. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
People with Arthritis (quantitative survey)	2000	1	20/60	667
People with Arthritis (qualitative data collection, ie., focus groups)	100	1	90/60	150
MDs and other health care professionals	24	1	90/60	36
Total				853

Dated: September 18, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–24401 Filed 9–25–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–82]

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: Human Exposure to Cyanobacterial (blue-green algal) Toxins in Drinking Water: Risk of Exposure to Microcystin from Public Water Systems (OMB. No. 0920–0527)—Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background

Cyanobacteria (blue-green algae) can be found in terrestrial, fresh, brackish, or marine water environments. Some species of cyanobacteria produce toxins that may cause acute or chronic illnesses (including neurotoxicity, hepatotoxicity, and skin irritation) in humans and animals (including other mammals, fish, and birds). A number of human health effects, including gastroenteritis, respiratory effects, skin irritations, allergic responses, and liver damage, are associated with the ingestion of or contact with water containing cyanobacterial blooms. Although the balance of evidence, in conjunction with data from laboratory animal research, suggests that cyanobacterial toxins are responsible for a range of human health effects, however, there have been few epidemiologic studies of this association. We plan to recruit 100 people whose tap water comes from a source with a current cyanobaterial bloom (*i.e.*, *M. aeruginosa*) and who report drinking unfiltered tap water. We also plan to recruit 100 people who report drinking unfiltered tap water but whose tap water source is groundwater that has not been contaminated with cyanobacteria. This population will serve as our referent population for the analysis of microcystins in blood and for the clinical assays. We will administer a questionnaire and collect blood samples from all study participants. Blood samples will be analyzed using a newly developed molecular assay for levels of microcystins—the hepatotoxin produced by *Micocystis aeruginosa.* We also will analyze blood samples for levels of liver enzymes (a biological marker of hepatotoxicity) and for a number of clinical parameters including hepatitis infection (a potential confounder in our study). We will evaluate whether we can (1) Detect low levels of microcystins (<10 ng/ml of blood), in the blood of people who are exposed to very low levels of this toxin in their drinking water, (2) utilize clinical endpoints such as blood liver enzyme levels as biomarkers of exposure and biological effect, and (3) compare the analytical results for the exposed population with the results from the referent population. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
Telephone Contact	300	1	10/60	50
Survey	200	1	1	200
Tap water sample collection	200	1	30/60	100
Total				350

Dated: September 19, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–24403 Filed 9–25–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–47–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Hospital Bioterrorism Needs Assessment—New—National Center for Infectious Disease (NCID), Centers for Disease Control and Prevention (CDC). In October-November 2001, following the reports of anthrax cases, the infection control community indicated to the Division of Healthcare Quality Promotion that there was a need for more bioterrorism-related information. A needs assessment was created and pilot tested in eight hospitals to assist DHQP in providing guidance to hospitals for preparedness and response. The needs assessment will gather information that will help the Division and other areas of CDC in evaluating CDC strategies for identifying and developing the materials and communication mechanisms that hospitals need most to adequately prepare for and respond to possible bioterrorism events in the future. The Division of Healthcare Quality Promotion has a more than 30-year history of being seen as a reliable source of information to the infection control community. Our objective is to determine the needs of hospitals so they are adequately prepared to recognize and treat bioterrorism-related diseases and prevent further transmission of disease. This will ultimately enable them to do their jobs better, identify bioterrorism events more quickly, and prevent morbidity and mortality.

The needs assessment will assess the bioterrorism planning and preparedness, resources and communication, impact of anthrax events, surveillance for bioterrorism-related diseases, education and training, and information needs in hospitals. The data from responding hospitals will be used to develop improved methods of communication to healthcare providers and facilities, establish the best way for CDC to disseminate materials, assure disaster plans are in place, and determine what information from CDC is of greatest need to healthcare facilities.

The data collection will use web-based technology to gather information in a systematic fashion to better assist hospitals. These topics were chosen for the needs assessment by staff members of the Division of Healthcare Quality Promotion, who provided expertise to healthcare facilities after the September 11th attacks. The estimated annualized burden is 1,000 hours.

Title	Number of respondents	Number of responses/ respondent	Average burden/ response (in hrs.)
Bioterrorism needs assessment for healthcare facilities	4,000	1	15/60

Dated: September 19, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 02–24402 Filed 9–25–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Endocrinologic and Metabolic Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Endocrinologic and Metabolic Drugs Advisory Committee. This meeting was announced in the **Federal Register** of August 1, 2002 (67 FR 49945). The amendment is being made to reflect a change in the *Agenda* portion of the document. The meeting was originally scheduled for September 25, 26, and 27, 2002. However, due to administrative complications, the discussions on September 26 and 27, 2002, will be postponed until a later date. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Kathleen Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, FAX 301–827–6776, or e-mail: *reedyk@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12536, for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 1, 2002, FDA announced that a meeting of the Endocrinologic and Metabolic Drugs Advisory Committee would be held on September 25, 26, and 27, 2002. On page 49945, in the first column, the *Agenda* portion of the meeting is amended to read as follows:

Agenda: On September 25, 2002, the committee will discuss appropriate designs for clinical trials of new osteoporosis treatments.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: September 23, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–24561 Filed 9–23–02; 5:02 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Development of Novel Technologies for *In Vivo* Imaging.

Date: November 4–5, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892, (301) 496–7576, *bielatk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24382 Filed 9–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Technologies for the Molecular Analysis of Cancer.

Date: November 4–5, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, Gaithersburg, MD 20878.

Contact Person: Sherwood Githens, PhD., Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892, (301) 435–1822.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24383 Filed 9–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee F—Manpower & Training.

Date: November 12–14, 2002.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave. NW., Washington, DC 20007.

Contact Person: Robert E. Bird, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, PHS, DHHS, 6116 Executive Boulevard, Room 8113, Bethesda, MD 20892–8328, 301–496–7978, *birdr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24385 Filed 9–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Reagent Resource Support for AIDS Vaccine Development.

Date: October 24, 2002.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6700–B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alec Ritchie, Phd, Scientific Review Administrator, NIAID, DEA, Scientific Review Program, Room 2223, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, (301) 496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24374 Filed 9–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, NIDCD Training and Conference Grants.

Date: October 24, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 400C, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Stanley C. Oaks, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24375 Filed 9–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant application and the discussions could disclose confidential trade secrets or commercial property such as patentable material. and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Program Project Applications.

Date: October 23–25, 2002.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications

Place: Holiday Inn Hotel and Conference Center, 3 Executive Boulevard, Suffern, NY 10901.

Contact Person: Linda K. Bass, PhD. Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Program Project Applications.

Date: October 28–30, 2002.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Inner Harbor, 301 West Lombard Street, Baltimore, MD 21201.

Contact Person: Ethel B Jackson, DDS, Chief, Scientific Review Branch, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–7826.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 92.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: September 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24376 Filed 9–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Review of NIDCD Small Grant (R03) Applications.

Date: November 13–14, 2002.

Time: November 13, 2002, 8 a.m. to 5 p.m.

Agenda: To review and revaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Terrace A & B Chevy Chase, MD 20815.

Time: November 14, 2002, 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Terrace A & B, Chevy chase, MD 20815.

Contact Person: Stanley C. Oaks, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd, Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24377 Filed 9–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of 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, NIDCD.

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 Institute on Deafness and Other Communication Disorders, 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, NIDCD.

Date: October 25, 2002.

Open: 8:45 a.m. to 9:15 a.m.

Agenda: Reports from institute staff.

Place: 9000 Rockville Pike, Bldg. 50, Bethesda, MD 20892.

Closed: 9:15 a.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: 9000 Rockville Pike, Bldg. 50, Bethesda, MD 20892.

Contact Person: Robert J. Wenthold, PhD, Director, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Room 2B28, Rockville, MD 20852, 301–402–2829.

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. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24378 Filed 9–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notices of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be 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 meetings will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated, with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: October 21–22, 2002.

Open: October 21, 2002, 1 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Closed: October 21, 2002, 1:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Open: October 21, 2002, 5:30 p.m. to adjournment.

Agenda: To review procedures and discuss policies.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Closed: October 22, 2002, 8 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892, 301/594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Diseases and Nutrition C Subcommittee.

Date: October 21–22, 2002.

Open: October 21, 2002, 1 p.m. to 1:30 p.m.

Agenda: To review procedures and discuss policies.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Closed: October 21, 2002, 1:30 p.m to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Open: October 21, 2002 5:30 p.m. to adjournment.

Agenda: To review procedures and discuss policies.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Closed: October 22, 2002, 8 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Contact Person: Carolyn Miles, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892, 301/594–7791, *miles@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: October 21–22, 2002.

Open: October 21, 2002, 2 p.m. to 2:30 p.m.

Agenda: To review procedures and discuss policies.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Closed: October 21, 2002, 2:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Open: October 21, 2002, 5:30 p.m. to adjournment.

Agenda: To review procedures and discuss policies.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Closed: October 22, 2002, 8 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Contact Person: Neal A. Musto, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892, 301/594–7798, *muston@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24384 Filed 9–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of 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 Library of Medicine Special Emphasis Panel IAIMS Grants.

Date: October 30, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, (Telephone Conference Call).

Contact Person: Merlyn M. Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 19, 2002.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24379 Filed 9–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of 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 Library of Medicine Special Emphasis Panel, RO1'S Telephone Conference.

Date: October 28, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Division of Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Merlyn M. Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institute of Health, HHS)

Dated: September 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24380 Filed 9–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular, Cellular and Developmental Neurosciences 4.

Date: October 10–11, 2002.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Anne E. Schaffner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *schaffna@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Innate Immunity/Host Defense.

Date: October 11, 2002.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Grand Hotel, 2350 M Street, NW., Washington, DC 20037–1417.

Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221, *laingc@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 5.

Date: October 15, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 4.

Date: October 15–16, 2002.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Dan Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 1.
Date: October 15–16, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Adult Psychopathology and Disorders of Aging.
Date: October 15–16, 2002.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC 20005–2750.
Contact Person: Jeffrey W. Elias, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *eliasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review and Special Emphasis Panel, Fellowship Review: Sensory and Motor Systems Physiology.
Date: October 16, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892 (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 BDCN 2 02M:Member Conflict: BDCN IRG.
Date: October 16, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@mail.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Bacteriology and Mycology Subcommittee 2.
Date: October 16–17, 2002.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: State Plaza Hotel, 2117 E Street, Washington, DC 20037.
Contact Person: Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7808, Room 4190, Bethesda, MD 20892, 301–435–0903.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Endocrinology Study Section.
Date: October 17–18, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Syed M. Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043, *amirs@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Alcohol and Toxicology Subcommittee 3.
Date: October 17–18, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Christine Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7816, Bethesda, MD 20892, (301) 435–1713.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Tropical Medicine and Parasitology Study Section.
Date: October 17–18, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146, *hickmanj@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 5.
Date: October 17–18, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.
Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435–1224.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Corneal Science.
Date: October 17–18, 2002.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Monaco, 700 F Street, NW., Washington, DC 2004.
Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience-5 (01).
Date: October 17–18, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel & Suites, 2033 M Street, NW., Washington, DC 20036–3305
Contact Person: Sherry L Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, *stuesses@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BDCN2 01S: Clinical Neuroplasticity and Neurotransmitters.
Date: October 17–18, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, Washington, DC 20037.
Contact Person: William C. Benzing, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@mail.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 7.
Date: October 17–18, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.
Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 3.
Date: October 17–18, 2002.
Time: 8:30 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Gerhard Ehrenspeck, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022. *ehrenspg@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 1.
Date: October 17–18, 2002.
Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Michael H. Sayre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219. *sayrem@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Experimental Therapeutics Subcommittee 1.

Date: 17–18, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Arlington, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718. *perkins@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Prevention and Health Behavior 1.

Date: 17–18, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Fifteenth and M Streets, NW., Washington, DC 20005.

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912. *levin@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Community-Level Health Promotion (CLHP).

Date: 17–18, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Madison Hotel, Fifteenth & M Streets NW., Washington, DC 20005.

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, 301–435–0681, *schwarte@csr.nih.gov.*

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Social Sciences, Nursing, Epidemiology and Methods 5, Biostatistical Methods.

Date: October 18, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Madison Hotel, 15th and M Streets, NW., Washington, DC 20005.

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6702 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 7, Motor Function, Speech and Rehabilitation.

Date: October 18, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Weija Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–83.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24381 Filed 9–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Prospective Grant of Exclusive License: Drug and Method for the Therapeutic Treatment of Head and Neck Cancer

AGENCY: National Institutes of Health, Public Health Services, DHHS.

ACTION: None.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. provisional patent application 06/911,227 (DHHS ref. no. E–385–86/0) filed September 24, 1986 and issued on January 01, 1990 as USPSN 4,892,827 (no foreign rights available from DHHS) and entitled ''Recombinant pseudomonas exotoxins: Construction of an active immunotoxin with low side effects,'' U.S. patent application 07/341,361 (DHHS ref. no. E–135–89/0) filed April 21, 1989 and entitled ''Recombinant antibody—Toxin fusion protein,'' now abandoned in favor of USPASN 07/865,722, U.S. patent application 07/865,722 (DHHS ref. no. E–135–89/1), a file-wrapper-continuation of USPASN 07/341,361, filed April 08, 1992 and issued as USPSN 6,051,405 on April 18, 2000 and entitled, ''Constructs encoding recombinant antibody-toxin fusion proteins,'' U.S. patent application 08/461,825 (DHHS ref. no. E–135–89/2), a divisional of 07/865,722, filed June 05, 1995 and issued as USPSN 5,863,745 on January 26, 1999 and entitled, ''Recombinant antibody—Toxin fusion protein, '' and U.S. patent application 08/463,163 (DHHS ref. no. E–135–89/3), a divisional of 07/865,722, filed June 05, 1995 and issued as USPSN 5,696,237 on December 09, 1997 and entitled, ''Recombinant antibody—Toxin fusion protein,'' to Viventia Biotech, Inc., of Toronto Canada. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide. The field of use may be limited to use of VB4–845–PE immunotoxin targeting the Ep-CAM antigen in head and neck cancer.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before November 25, 2002, will be considered.

ADDRESSES: Requests for copies of the patent(s)/patent application(s), inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Jonathan V. Dixon, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: 301.496.7056, x270; Facsimile 301.402.0220; e-mail *dixonj@od.nih.gov.*

Technology Brief: The above-referenced patent(s)/patent application(s) relate to various immunotoxins, specifically to Pseudomonas exotoxin. The patent(s) relate to the synthesis of recombinant antibody-toxin fusion proteins, which are capable of effectively and selectively killing cells bearing appropriate antigens or receptors.

SUPPLEMENTARY INFORMATION: 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 sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 18, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–24386 Filed 9–25–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW156345]

Coal Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration license.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.A. 201(b), and to the regulations adopted at 43 CFR 3410, all interested parties are hereby invited to participate with RAG Coal West, Inc. on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

T. 51 N., R. 72 W., 6th P.M., Wyoming
Sec. 17: Lots 1–16;
Sec. 18: Lots 5–20;
Sec. 19: Lots 5–20;
Sec. 20: Lots 1–15;
Sec. 29: Lots 1 (W2), 2–7, 8 (W2 & SE), 9–16;
Sec. 30: Lots 5–20;
Sec. 31: Lots 5–20;
Sec. 32: Lots 1–16.

Containing 5,497.318 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to obtain information on the geology and quality of coal resources within the area of the West Extension Lease by Application (WYW155132) filed by RAG Coal West, Inc. as a maintenance tract to the west of the Eagle Butte Mine.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management (BLM). Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW156345): BLM Wyoming State Office, 5353 Yellowstone Road, PO Box 1828, Cheyenne, WY 82003; and, BLM Casper Field Office, 2987 Prospector Drive, Casper, WY 82604.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in ''The News-Record'' of Gillette, WY, once each week for two consecutive weeks beginning the week of August 26, 2002, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the BLM and RAG Coal West, Inc., no later than thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: RAG Coal West, Inc., Attn: Bill Bolger, P.O. Box 3040, Gillette, WY 82717–3040, and the BLM Wyoming State Office, Branch of Solid Minerals, Attn: Mavis Love, P.O. Box 1828, Cheyenne, WY 82003–1828.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Dated: July 11, 2002.

Alan Rabinoff,

Deputy State Director, Minerals and Lands.

[FR Doc. 02–24460 Filed 9–25–02; 8:45 am]

BILLING CODE 4310–22–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NDM 88114]

Proposed Jurisdictional Transfer; North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to permanently transfer administrative jurisdiction of the surface only of 640 acres of public land to the U.S. Forest Service. The land is an isolated tract within the boundary of the Medora Ranger District of the Little Missouri National Grasslands, U.S. Forest Service and can be more effectively and efficiently managed by the Forest Service. This notice closes the land for up to 2 years from settlement, sale, location or entry under all of the general public land laws, including the United States mining laws. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: Comments must be received by December 26, 2002.

ADDRESSES: Comments should be sent to the State Director, Bureau of Land Management, Montana State Office, PO Box 36800, Billings, Montana 59107–6800.

FOR FURTHER INFORMATION CONTACT: Douglas Burger, BLM North Dakota Field Office, 2933 Third Ave. West, Dickinson, North Dakota 58601–2619, or Deborah Sorg, BLM Montana State Office, PO Box 36800, Billings, Montana 59107–6800, 406–896–5045.

SUPPLEMENTARY INFORMATION: The U.S. Forest Service has filed an application to transfer jurisdiction of the following described public land from all forms of appropriation under the general land laws, including the mining laws, subject to valid existing rights, for the Medora Ranger District of the Little Missouri National Grasslands:

Fifth Principal Meridian, North Dakota

T. 141 N., R. 101 W.,
Sec. 10, all.

The area described contains 640.00 acres in Billings County.

The Bureau of Land Management has determined that the public land within the boundary of the Dakota Prairie Grasslands would be more efficiently and effectively managed by the Forest Service.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed transfer of jurisdiction may present their views in writing to the Montana State Office of the Bureau of Land Management at the above address.

The application will be processed in accordance with the regulations set forth in 43 CFR 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 jurisdictional transfer is approved prior to that date.

Dated: August 22, 2002.

Howard A. Lemm,

Acting Deputy State Director, Division of Resources.

[FR Doc. 02–24462 Filed 9–25–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–060–1430–ES; AZA 31869]

Notice of Realty Action; Bureau Motion; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public lands in Saginaw Hill, Pima County, Arizona have been examined and found suitable for classification for lease or conveyance to the Pima County Parks and Recreation Department under the provisions of the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 *et seq.*, and under sec. 7 of the

Taylor Grazing Act, 43 U.S.C. 315f, and E.O. 6910. The Pima County Parks and Recreation Department proposes to use the lands for public trails park.

Gila and Salt River Meridian, Arizona

T. 15 S., R. 12 E.,
Sec. 1, lots 24–31 inclusive;
Sec. 11, N½NE¼, N½SW¼NE¼, SE¼SW¼NE¼, N½SE¼NE¼, SE¼, MS 1448, MS 1449;
Sec. 12, lots 5–12 inclusive, W½NW¼, N½SE¼NW¼, SW¼SE¼NW¼, MS 1448, MS 1449.

The area described aggregates 515.216 acres. This action is a motion by the Bureau of Land Management to make available lands identified and designated as disposal lands under the Safford District Resource Management, Plan, dated August 1991 and amendment dated July 1994, and are not needed for Federal purposes. Lease or conveyance of the lands for recreational or public purpose use is consistent with current BLM land use planning and would be in the public interest.

The lease or conveyance of the lands will be subject to the following terms, conditions, and reservations:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391 (43 U.S.C. 945).

2. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

5. A right-of-way authorized under the Act of November 9, 1921, 42 Stat. 216 for a road and drainage purposes to the Arizona Department of Transportation, (*AZA 006032*) affecting public lands within sec. 1, T. 15 S., R. 12 E.

6. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (43 U.S.C. 1761) for road purposes to the Pima County Transportation and Flood Control (*AZA 018432*) affecting public lands within sec. 11, T. 15 S., R. 12 E.

7. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (43 U.S.C. 1761) for pipeline and station site purposes to the City of Tucson (*AZA 018787*) affecting public lands within sec. 11, T. 15 S., R. 12 E.

8. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2781 (43 U.S.C. 1767) for the Central Arizona Project purposes to the Bureau of Reclamation (*AZA 022075*) affecting public lands within sec. 11, T. 15 S., R.12 E.

9. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 776 (43 U.S.C. 1761) for powerline purposes to Trico Electric Cooperative, Inc., (*AZA 022597*) affecting public lands within sec. 11, T. 15 S., R. 12 E.

10. A right-of-way authorized under the Act of March 4, 1911, 36 Stat. 1253 (43 U.S.C. 961) for powerline purposes to Trico Electric Cooperative, Inc., (*AZAR 003905*) affecting public lands within sec. 12, T. 15 S., R. 12 E.

11. A right-of-way authorized under the Act of October 21, 1976, 36 Stat. 1253 (43 U.S.C. 961) for powerline purposes to Trico Electric Cooperative Inc., (*AZAR 035316*) affecting public lands within sec. 12, T. 15 S., R. 12 E.

12. A right-of-way authorized under the Act of February 25, 1920, 41 Stat. 37; (30 U.S.C. 437) for compressor station purposes to El Paso Natural Gas (*AZPHX 083253*) affecting public lands within sec. 11, T. 15 S., R. 12 E.

13. A right-of-way authorized under the Act of February 25, 1920, 41 Stat. 437 (30 U.S.C. 185) for gas pipeline purposes to El Paso Natural Gas (*AZPHX 086067*) affecting public lands within sec. 11, T. 15 S., R. 12 E.

Detailed information concerning this action is available for review at the Bureau of Land Management, Tucson Field Office, 12661 East Broadway, Tucson, Arizona. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. Interested persons may submit comments regarding the proposed classification or lease/conveyance of the lands until November 12, 2002, to the Field Office Manager, Tucson Field Office, 12661 East Broadway, Tucson, Arizona 85748–7208.

Classification Comments: Interested persons may submit comments involving the suitability of the land for a public trails park. 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 local planning and zoning, or if the use is consistent with state and federal programs.

Application Comments: Interested persons may submit comments regarding the specific use proposed in the application and plan of development, 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 a public trails park.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective on November 25, 2002.

Dated: August 12, 2002.

Shela A. McFarlin,

Field Manager.

[FR Doc. 02–24463 Filed 9–25–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(CA–320–1430–EU); (CACA–44232)]

Notice of Realty Action; Noncompetitive Sale of Public Lands in Modoc County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public land in Modoc County, California has been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, as amended (90 Stat. 2750, 43 U.S.C. 1713), at not less than the appraised fair market value of $5,000. The land will not be offered for sale until at least 60 days after the publication date of this notice.

Mount Diablo Meridian, California

T. 39 N., R. 13 E.
Section 12; Lot 2.
Containing 5.01 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the publication of this notice, whichever occurs first. This land is being offered by direct sale to Norm Vogt and Elsie M. Vogt, to resolve a long-standing unintentional residential occupancy. The Bureau of Land Management (BLM) has completed a mineral report for this land, and has determined that the subject parcel contains no known mineral values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

The patent, when issued, will contain a reservation to the United States of a

right-of-way thereon for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945); and will be subject to those rights for purposes of a Revised Statutes 2477 road granted to the County of Modoc, for the Jess Valley Road. An additional right-of-way, CACA–19788, was granted to Norm and Elsie Vogt to temporarily authorize the existing residential improvements until the problem could be resolved by this sale action. That right-of-way will be relinquished simultaneously with completion of this sale. No Federal grazing permits will be affected in any way by this sale. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Alturas Field Office, 708 West 12th Street, Alturas, California 96101.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the sale to the Field Manager, Alturas Field Office, at the above address. In the absence of any adverse comments, this proposal shall become the final determination of the Department of the Interior.

Timothy J. Burke,

Field Manager.

[FR Doc. 02–24461 Filed 9–25–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–120–1430–ES; COC–65444, COC–65445, COC–65446]

Notice of Realty Action: Proposed Classification of Public Lands for Recreation and Public Purposes Lease/Conveyance in Jackson County, CO

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land in Jackson County, Colorado has been examined and found suitable for classification for lease or conveyance to the Colorado Division of Wildlife, under the provisions of the Recreation and Public Purposes act, as amended (43 U.S.C. 869 *et seq.*). The Colorado Division of Wildlife proposes to use the land for recreation purposes at Lake John, Seymour Reservoir and Cowdrey Lake. Publication of this notice will initiate public review, consultation and collaboration for this classification action.

Sixth Principal Meridian, Colorado

Township 10 North, Range 81 West (Lake John—COC–65444)
Section 34, E½SW¼, SE¼ (portion within excluded area of allotments 7148 and 7186).
Section 35, W½SW¼ (portion within excluded area of allotments 7148 and 7186).
Containing 105 acres.

Township 6 North, Range 80 West (Seymour Reservoir—COC–65445)
Section 20, E½NE¼.
Containing 80 acres.

Township 10 North, Range 79 West (Cowdrey Lake—COC–65446)
Section 18, lots 3 and 4, E½SW¼ (portion west of abandoned railroad grade).
Containing 105.25 acres.

The total amount of public land affected by this classification comprises approximately 290.25 acres.

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, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws, for a period of 18 months.

SUPPLEMENTARY INFORMATION: The Colorado Division of Wildlife proposes to use the land to construct, operate and maintain recreation areas at the above locations, including boating and fishing access and picnic facilities. The land is not needed for Federal purposes. Leasing or conveyance of title to the affected public land is consistent with the Kremmling Resource Area Resource Management Plan (December 1984) and would be in the public interest.

The lease/conveyance, when issued, would be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior;

2. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945);

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations;

4. Those rights for reservoir purposes as have been granted to Meyring Livestock Company, its successors and assigns, by right-of-way CO–662, under the Act of March 3, 1891 (26 Stat.1101);

5. A right-of-way existing or of record for Jackson County Road 11A, located in the NE¼NE¼ of Section 20, Township 6 North, Range 80 West; Jackson County Road 39, located in the SW¼ of Section 18, Township 10 North, Range 79 West; Jackson County Road 7A, located in the SE¼ of Section 34 and the W½SW¼ of Section 35, Township 10 North, Range 81 West.

6. Title to the lands will revert to the United States if the Colorado Division of Wildlife attempts to transfer title to or control over the lands to a non-qualified person; the lands are substantially devoted to any use other than recreation; or the lands have not been used substantially for recreation for a 5-year period.

Detailed information concerning this action is available for review at the Kremmling Field Office, Bureau of Land Management, 2103 E. Park Avenue, Kremmling, Colorado 80459 or by calling Madeline Dzielak (970) 724–3003.

Classification Comments: Interested parties may submit comments involving the suitability of the land for recreation purposes. 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 local planning and zoning, or whether 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 recreation purposes. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance or classification of the land to the Field Manager, Kremmling Field Office, Bureau of Land Management, 2103 E. Park Avenue, Kremmling, Colorado 80459. 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, this realty action will become the final determination of the Department of the Interior.

Dated: August 13, 2002.

Linda Anania Gross,

Field Manager.

[FR Doc. 02–24477 Filed 9–25–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930, 1430–EU; N–65600]

Notice of Realty Action: Segregation of Public Land.

AGENCY: Bureau of Land Management, Interior.

ACTION: Segregation of Public Land in Orovada, Humboldt County, Nevada.

SUMMARY: Upon publication of this Notice in the **Federal Register**, the below 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.

Authority: Pursuant to section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750, 43 U.S.C. 1713).

Location: Mount Diablo Meridian

T. 44 N., R. 37 E., section 29 N½NE¼; E½NW¼;
T. 44 N., R. 37 E., section 32 E½
T. 43 N., R. 37 E., section 4 Lots 3, 4; S½NW¼, SE¼; S½SW¼;
T. 43 N., R. 37 E., section 5 Lots 1,2,3; S½NE¼, N½SE¼, SE¼SE¼
1200.43 acres total more or less.

This segregation shall terminate upon issuance of a patent or other document of conveyance or 270 days from the date of this publication, whichever occurs first. Upon publication of this notice and until completion of the proposed sale, the BLM shall no longer take, accept, consider as filed and shall not be returned to the applicant, any subsequent applications affecting the parcel, if the notice segregates the lands from the use applied for in the application. The segregation is consistent with current Bureau planning for this area.

FOR FURTHER INFORMATION CONTACT: M. Lynn Trost, Realty Specialist, Bureau of Land Management, at 5100 E. Winnemucca Blvd., Winnemucca, NV 89445, or telephone (775) 623–1500.

Dated: September 17, 2002.

Terry A. Reed,

Winnemucca Field Manager.

[FR Doc. 02–24400 Filed 9–25–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–1430–ES; NMNM–108598]

Notice of Realty Action: Commercial Permit/Lease/or Possible Sale on Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Commercial Permit/ Lease/Sale, Section 302 , Federal Land Policy and Management Act.

SUMMARY: The Bureau of Land Management, Farmington Field Office, Farmington, New Mexico, has for consideration interest in land use authorization(s) under section 302 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2762; 43 U.S.C. 1732), and regulations at 43 CFR part 2920. San Juan County, proposes to use approximately 1.26 acres of public land for a recreation/RV park facility.

Description: An area of federal lands managed by the Bureau of Land Management, Department of the Interior, lying approximately within sections 28 of Township 29 N., R.12 W., New Mexico Principal Meridian. Further described as Section 28: E½NE¼ NE¼ SW¼ SE¼; Containing 1.26 acres more or less.

A application which will be accepted after the publication of the NORA. A determination to analyze the proposed project or any other applications received from this notice will be made subsequent to a review of applications which will be submitted after the publication of this NORA.

If found suitable for the proposed use, such use would be authorized through a competitive or non-competitive process, by permit, lease, or possible sale, as appropriate, at fair market rental, paid annually in advance. A permit, lease or sale, could authorize use of the land for recreation/ RV park. A holder of a permit, or lease would be required, in advance of authorization, to agree to the terms and conditions of 43 CFR 2920.7 and such additional terms and conditions as are deemed necessary for the particular use authorization. Permitting/leasing/ or sale under Section 302 of FLPMA within the above-described area would be consistent with the Bureau of Land Management's current Farmington Field Office's Resource Area Management Plan.

An authorized Permittee, lessee, would be required, in advance, to reimburse the United States for reasonable administrative fees and monitoring of construction, operation, maintenance, and rehabilitation of the land authorized.

Any permit, lease, or sale authorized would be subject to valid existing rights.

Detailed information is available for review at the office of the Bureau of Land Management, Farmington Field Office, 1235 La Plata Highway, Farmington, New Mexico.

DATES: Interested parties may submit comments for a period of 45 days from publication of this notice in the **Federal Register** to: Bureau of Land Management, Field Office Manager, Farmington Field Office, 1235 La Plata Highway, Farmington, New Mexico 87401.

FOR FURTHER INFORMATION CONTACT: Albert Gonzales, Farmington Field Office, Bureau of Land Management, 123 5 La Plata Highway, Farmington, New Mexico 87401; (505) 599–6334.

Joel Farrell,

Assistant Field Office Manager.

[FR Doc. 02–24469 Filed 9–25–02; 8:45 am]

BILLING CODE 4310–VB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–060–2002–1110–JB]

Cedar Hills Road Closure and Proposed Transportation Plan/Route Designations for the Cedar Hills Mule Deer Management Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure.

SUMMARY: The Roswell Field Office proposes to protect resource values in the Cedar Hills Mule Deer Management Area by developing a transportation plan that includes route designations and road and trail closures. This action is in accordance with the 1997 Roswell Resource Management Plan. The route plan is necessary to reduce the impact from recreationist to wildlife, wildlife habitat, soils, and range improvements.

DATES: Those wishing to submit comments to the BLM on this proposal must do so at the appropriate address below on or before October 28, 2002. BLM will not consider any comments received after the above date in making its decision on the final transportation plan.

ADDRESSES: Bureau of Land Management, Roswell Field Office, Attention Rand French, 2909 West Second, Roswell, New Mexico, 88201. Internet e-mail: *randfrench@blm.gov*.

FOR FURTHER INFORMATION CONTACT: Rand French at the address listed above,

telephone number (505) 627–0266, during normal business hours (7:45 a.m to 4:30 p.m Mountain Time).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Procedural Matters

I. Public Comment Procedures

Comments on the proposed transportation plan/route designations, should be specific, should be confined to issues pertinent to the proposal, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal that is being addressed. BLM may not necessarily consider or include in the Administrative Record for the final transportation plan comments that are received after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

BLM will make the comments received, including your name and address, available for public review at the Roswell Field Office address listed in **ADDRESSES** above during regular business hours (hours listed above).

Under certain conditions, BLM can keep personal information confidential. If you wish to have personal information withheld, please 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 of officials of organizations or businesses.

II. Background

The authority for the proposed activities is under 43 CFR part 8342, which provides for the designation of roads and trails to protect resources of the public land. This section goes on to require public participation, designation, and identification of designated areas and trails. Public meetings have been completed. Public participants were also involved in the NEPA process and were given a chance to comment on the Environmental Assessment. The RMP constitutes the formal designation process for off-highway vehicles. This notice will serve as public notice for the official designation and identification of specific roads and trails in the Cedar Hills Mule Deer Management Area. Appropriate informational material will be provided and available to the public at the BLM office and on site.

The Cedar Hill area is located approximately 35 miles northwest of Roswell, New Mexico, along New Mexico Highway 246 (also known as Pine Lodge Road). There is one legally accessible road off of the highway into the area. This road serves as the main access into the Cedar Hill area as well as access to a private residence located on the west side of the area. Land ownership in the area consists of 4,145 acres of Public Land administered by the Bureau of Land Management Roswell Field Office, 740 acres of State land administered by the New Mexico State Land Office, and 1,775 acres of private land owned by Mike and Jennifer Corn. Mark Marley owns a very small parcel of private land on the south end in the Salt Creek area.

The Cedar Hill area is unique because of the soils and vegetation found there are substantially different from that of much of the surrounding area. Sand shinnery oak, juniper trees, and sumac vegetation differentiate this area from its surroundings. Also within the area is the Salt Creek drainage, where vegetation such as desert willow, black walnut, and hackberry are found and which further defines the area. West of the Salt Creek, upland grassland vegetation typical of shallow soil rangelands of southeast New Mexico exists.

The Cedar Hill area is utilized by the public for hunting, wildlife viewing, historic artifact hunting, camping, wood collecting, and other recreational uses. Some of these activities are permitted and legal, while others occur in violation of laws and regulations. Damage to the area is occurring from the proliferation of vehicle routes due to public use. Each year, especially during the legal deer hunts, off-road driving develops new trails. Once a vehicle leaves an established road and leaves evidence of traffic, other people follow the trail and a new road is established. This leads to accelerated soil erosion in the area and disrupts wildlife and their habitat. Duplicate routes exist leading to the same destination as other roads, and some trails have no apparent destination and merely dead end. Vehicle traffic on roads that follow the path of water pipelines may also damage the pipe, which disrupts water supplies for livestock and wildlife.

Livestock grazing is permitted on Public and State lands to Mike and Jennifer Corn. The Corns are responsible for maintenance of existing range improvements within the area. These improvements are water pipelines, drinking troughs, and fences to facilitate management of the livestock. The water related improvements benefit wildlife as well as livestock by providing a permanent source of water.

Instances where water pipelines or drinking troughs are damaged from vandalism or by vehicle traffic are costly. This is in terms of the expense involved to repair the damage as well as needless suffering by livestock and wildlife that are dependent on the water.

The private landowner and grazing permittee approached the BLM in 1999 about managing the public use of the area, and possibly closing some of the roads and trails. During the 2000 deer hunt, the BLM installed a sign at the entrance to the area, which included a map and text explaining legal use in the area and allowable use by motorized vehicles. A patrol of the area was also initiated during the hunting season to curtail off-road driving. These actions have led to more awareness by the public; however, a long-term access plan for the area needs to be developed. In order to facilitate the long-term plan, the BLM inventoried and mapped all of the existing roads and trails in the spring of 2001.

III. Procedural Matters

Executive Orders

The proposed road closures are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. Implementation of the action will not have an effect of $100 million or more on the economy. They are not intended to affect commercial activity, but contain rules of conduct of public land and protect public resources. The proposed road closures will not create inconsistencies or otherwise interfere with an action taken or planned by another agency.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights

The closures do not represent a Government action capable of interfering with constitutionally protected property rights. The closures do not address property rights in any form, and do not cause impairment of anyone's property rights. Access to private property will be maintained and authorized vehicles may be permitted by the BLM. Therefore, the Department of the Interior has determined that the closures would not cause a taking of private property or require further

discussion of taking implications under this Executive Order.

Executive Order 13132, Federalism

The road closures 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 various levels of Government. The closures affect land in only one State, New Mexico, and do not address jurisdictional issues involving the State government. Therefore, in accordance with Executive Order 13132, BLM has determined that these proposed road closures do not have sufficient Federalism implications to warrant preparation of a Federal Assessment.

Executive Order 12988, Civic Justice Reform

Under Executive Order 12988, BLM has determined that these closures would not unduly burden the judicial system and that they meet the requirements of sections 3(a) 3(b)(2) of the order.

National Environmental Policy Act (NEPA)

BLM has prepared an environmental assessment (EA) and has found that the proposed road and trail closures 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 road and trail closures are for the purpose of protecting natural resources, while still providing recreational uses. BLM has sent the EA and Finding of No Significant Impact (FONSI) out for public review and comment.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

The road and trail closures do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). Again, the closures are only closing unnecessary roads and trails or those causing resource damage. Access to the area will still be available. The closing of certain roads and trails will not have a significant affect on business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

The road and trail closures do not impose an unfunded mandate on State, local, or tribal governments or the private sector; nor do these closures have a significant or unique effect on State, local, or tribal governments or the private sector. The closures 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.*).

Paperwork Reduction Act

These closures do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these closures is Rand French of the Roswell Field Office, Bureau of Land Management, and Department of the Interior.

Dated: June 17, 2002.

Ron Wenker,

Acting Associate State Director.

Under the authority of 43 CFR part 8342, the New Mexico State Director proposes the road closures for the Cedar Hills Deer Management Area to read as follows:

Cedar Hills Road Closure and Transportation Plan

Sec. 1 Lands Affected by the Closures and Transportation Plan

The transportation plan and road closures apply to approximately 4,145 acres of Public Land administered by the Bureau of Land Management, Roswell Field Office, 740 acres of State land administered by the New Mexico State Land Office, and 1,775 acres of private lands owned by Mike and Jennifer Corn. The Roswell Approved Resource Management Plan and Record of Decision of October 1997 established the designation of roads. The legal description of the affected lands is as follows:

New Mexico Principal Meridian

T. 8 S., R. 20 E.,
Sections 4, 8, 9, 10, 15, 17, 20, 21, and 22.

[FR Doc. 02–24468 Filed 9–25–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1430–ET, CACA 7767 and CACA 44322]

Notice of Proposed Withdrawal, and Transfer of Jurisdiction, and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs has filed an application to withdraw approximately 7 acres of public lands, which are currently withdrawn to the Department of Navy for military purposes. The Department of Navy has determined the lands are no longer needed for military purposes and has agreed to partially relinquish their withdrawal. The lands are needed for expansion of the Fort Rosecrans National Cemetery, permitting the expansion of burial facilities to serve veterans in the San Diego metropolitan area. The Department of Veterans Affairs has also requested that the administrative jurisdiction be permanently transferred to them. The lands have been and will remain withdrawn from settlement, sale, location, or entry under the general land laws, including the mining laws.

DATES: Comments and requests for a public meeting must be received by December 26, 2002.

ADDRESSES: Comments and meeting requests should be sent to Howard K. Stark, Chief, Branch of Lands Management (CA–930), Bureau of Land Management, 2800 Cottage Way, Suite W–1834, Sacramento, California 95825–1886.

FOR FURTHER INFORMATION CONTACT: Duane Marti, Realty Specialist, Bureau of Land Management, 916–978–4675.

SUPPLEMENTARY INFORMATION:

1. The Department of Veterans Affairs has filed an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights for expansion of the Fort Rosecrans National Cemetery:

San Bernardino Meridian

T. 17 S., R. 4 W.,

That portion of lot 37 more particularly described by a metes and bounds survey that was prepared by the Department of Veterans Affairs.

The areas described aggregate 7 acres, more or less, in San Diego County. The subject lands are located directly east of the current Fort Rosecrans National Cemetery boundary. Once the survey has been approved by the Bureau of Land Management, copies of the survey will be available from the Bureau of Land Management at the address listed above.

2. The Department of Veterans Affairs has requested that administrative jurisdiction of those lands described above in paragraph 1 be permanently transferred to the Department of

Veterans Affairs, so that the lands can be managed as part of the Fort Rosecrans National Cemetery and shall thereafter be subject to all laws and regulations applicable thereto, subject to valid existing rights.

3. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, objections, or requests for public meetings in connection with the proposed actions described in this notice, may present their views in writing to the Chief, Branch of Lands Management, California State Office, Bureau of Land Management, at the address listed above. If the authorized officer determines that a public meeting should be held, it will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2). A notice of the time and place would be published in the **Federal Register** at least 30 days before the scheduled date of the public meeting.

4. The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

5. The subject lands are currently withdrawn for the Department of Navy for military purposes and therefore are segregated from settlement, sale, location, or entry under the general land laws and from location and entry under the United States mining laws. The temporary uses which may be permitted during this segregative period are those which are compatible with the use of the lands, as determined by the Bureau of Land Management, the Department of Navy, and the Department of Veterans Affairs.

Dated: August 28, 2002.

Howard K. Stark,

Chief, Branch of Lands Management.

[FR Doc. 02–24470 Filed 9–25–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Availability of Revised Outer Continental Shelf Leasing Map

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Availability of Revised Outer Continental Shelf (OCS) Leasing Map.

SUMMARY: Notice is hereby given that the NAD 27-based OCS Leasing Map, ''Outer Continental Shelf Leasing Map in the Western Gulf of Mexico Planning Area, TX3A, Mustang Island Area, East Addition,'' last revised on September 3, 2002, is on file and available for information only, in the Gulf of Mexico OCS Regional Office, New Orleans, Louisiana.

EFFECTIVE DATE: September 26, 2002.

ADDRESSES: Copies of Leasing Maps and Official Protraction Diagrams (OPDs) are $2.00 each. These may be purchased from the Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519 or (800) 200–GULF. Leasing Maps and OPDs may be obtained in two digital formats: *.gra* files for use in ARC/INFO and *.pdf* files for viewing and printing in Acrobat. Copies are also available for download at *www.gomr.mms.gov/homepg/lsesale/mapdiag.html.*

SUPPLEMENTARY INFORMATION: In accordance with Title 43, Code of Federal Regulations, this map is the basic record for the description of mineral and oil and gas lease sales in the geographic area it represents. This revision corrects an error on Leasing Map TX3A, Mustang Island Area, East Addition, November 1, 2000. The area value 4926.76 acres in Block A47 is corrected as follows: 4928.76 acres.

Dated: September 10, 2002.

Michael C. Hunt,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 02–24408 Filed 9–25–02; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–028]

Sunshine Act Meeting

AGENCY: United States International Trade Commission.

TIME AND DATE: October 2, 2002 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–417–419 and 731–TA–953–954, 956–959, and 961–962 (Final) (Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Modlova, Trinidad and Tobago, and Ukraine)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before October 15, 2002.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: September 23, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–24674 Filed 9–24–02; 3:15 pm]

BILLING CODE 7020–02–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, without change, of a previously approved collection for which approval has expired: Crime Victim Compensation State Certification Form.

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 100, page 36227 on May 23, 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 October 28, 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, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Crime Victim Compensation State Certification Form.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is OJP Administrative Form 7390/5, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local and Tribal Governments. The Victim of Crime Act (VOCA) as amended and the Victim Compensation Program Guidelines require each crime victim compensation program to submit an annual Crime Victim Compensation Certification Form. Information received for each program will be used to calculate the annual formula/block grant amount for the VOCA state crime victim compensation programs. The information is aggregated and serves as supporting documentation for the Director's biennial report to the Congress.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 54 respondents will each complete a one hour annual report.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 54 total hour burden 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: September 20, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–24438 Filed 9–25–02; 8:45 am]

BILLING CODE 4410–18–M

NUCLEAR REGULATORY COMMISSION

Workshop on Key Issues Related to the Licensing of Future Non-Light Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The NRC has underway preapplication reviews of advanced reactor designs. The purpose of these preapplication reviews is to identify, early in the design process, key safety issues and a path to their resolution. For advanced non-light water reactors, several such key issues were identified and described in SECY–02–0139. The purpose of this workshop is to discuss the issues described in SECY–02–139, including options for their resolution.

DATES: The workshop will be held on October 22–23, 2002—1 p.m. to 5 p.m. on October 22, 2002; 9 to 5 p.m. on October 23, 2002.

ADDRESSES: The workshop will be held at the Double Tree Hotel, 12500 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Farouk Eltawila, Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research, Mail Stop T–10 E32, telephone (301) 415–7499; Internet: *FXE@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For material related to the meeting, please contact U.S. NRC Public Affairs Office (301) 415–8200.

SUPPLEMENTARY INFORMATION:

Background

In a paper dated July 22, 2002, (SECY–02–0139, ''Plan for Resolving Policy Issues Related to Licensing Non-Light Water Reactors'') the Nuclear Regulatory Commission (NRC) staff identified seven issues with potential policy implications resulting from work to date reviewing non-light water reactors. These seven issues are:

- How should the Commission's expectations for enhanced safety be implemented for future non-LWRs?
- Should specific defense-in-depth attributes be defined for non-LWRs?
- How should NRC requirements for future non-LWR plants relate to international safety standards and requirements?
- To what extent should a probabilistic approach be used to establish the plant licensing basis?
- Under what conditions, if any, should scenario-specific accident source terms be used for licensing decisions regarding containment and site suitability?
- Under what conditions, if any, can a plant be licensed without a pressure-retaining containment building?
- Under what conditions, if any, can emergency planning zones be reduced, including a reduction to the site exclusion area boundary?

Discussion

Options for resolving these issues are under development and recommendations on their resolution are due to the Commission in December 2002. The options under consideration are listed in the agenda along with key considerations for discussion. To assist in developing and evaluating options and preparing recommendations, the NRC staff is planning to hold a workshop to discuss and solicit feedback on the issues and options for their resolution, including advantages and disadvantages.

Key Considerations for Discussion

Feedback is sought specifically on:

—Are the options for resolution being considered appropriate?
—Are there other options which should be considered?
—Which option(s) should be pursued and why?
—Which options should not be pursued and why?

Workshop Agenda

October 22, 2002

1–1:15 p.m. Introduction (NRC staff)
1:15–1:45 Overview of the Seven Issues and Options for Their Resolution (NRC staff)
Discussion of Issues and Options:
1:45–3:45 Issue 1: Expectations for Safety
—Options for Resolution:
- Maintain current level of safety
- Require an enhanced level of safety
- Require an enhanced level of confidence in the design

—Key Considerations:
- Should the Commission's Safety Goal Policy apply on a site or a per plant basis?
- Should safety be improved for future plants to ensure the population of plants that maintain safety?

3:45–4 p.m. Break
4–5 p.m. *Issues 2: Defense-in-Depth*
—Options for Resolution:
- Case-by-case determination
- Develop a description of defense-on-depth attributes
- Develop a process for determining defense-in-depth measures

—Key Considerations
- IAEA description

October 23, 2002

9–10 a.m. Issue 3: Use of International Codes and Standards
—Options for Resolution:
- Review and endorse international codes and standards only as needed to review an application
- Review and endorse existing international codes and standards, whenever practical to fill gaps in the NRC infrastructure
- Participate in the development of and endorse international codes and standards, whenever practical to fill gaps in the NRC infrastructure
- Harmonize, as much as possible, NRC licensing requirements with other regulatory bodies

—Key Considerations:
- Cost and schedule

10–10:15 a.m. Break

10:15–11:15 a.m. Issue 4: Event Selection and Safety Classification

—Options for Resolution:
- Deterministic selection of events to be considered in the design and safety classification
- Probabilistic selection of events to be considered in the design and safety classification.
- Combination of deterministic and probabilistic

—Key Considerations:
- Probabilistic risk assessment quality and completeness

11:15–12:30 p.m. Lunch

12:30–1:30 p.m. Issue 5: Licensing Source Term

—Options for Resolution:
- Use a bounding source term representative of core damage accident (LWR practice)
- Use a range of source terms corresponding to the design basis accident scenerios
- Key Considerations:
- Ensuring plant and fuel performance over the life of the plant

1:30–2:30 p.m. Issue 6: Containment vs. Confinement

—Options for Resolution:
- Require non-LWRs to have a pressure retaining containment building
- Allow a design without a pressure retaining containment provided certain performance criteria are met

—Key Considerations:
- Confidence in accident selection and source term

2:30–2:45 p.m. Break
2:45–3:45 p.m. Issue 7: Emergency Preparedness
—Options for Resolution:
- Retain current requirements and emergency planning zone size
- Allow a reduction in emergency planning zone size

—Key Considerations:
- Confidence in accident selection and source term

3:45–5 p.m. General Discussion and Wrapup

Dated at Rockville, Maryland, this 20th day of September 2002.

For the Nuclear Regulatory Commission.

Farouk Eltawila,

Director, Division of Systems Analsis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.

[FR Doc. 02–24439 Filed 9–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on October 10–12, 2002, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 26, 2001 (66 FR 59034).

Thursday, October 10, 2002

8:30 a.m.–8:35 a.m.: Opening Statement by the ACRS Chairman—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Confirmatory Research Program on High-Burnup Fuel (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC Staff and the Electric Power Research Institute (EPRI) regarding the confirmatory research program on high-burnup fuel and the EPRI topical report on reactivity insertion accidents.

10:15 a.m.–12:15 p.m.: Overview of European Simplified Boiling Water Reactor (ESBWR), SWR 1000 (Boiling Water Reactor), Advanced CANDU Reactor (ACR 700) Pre-Application Review (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC Staff and industry on the ESBWR (General Electric 1380 MWe), SWR 1000 (Framatome ANP-Siemens 1000 Mwe) and ACR 700 (Advanced CANDU Reactor 700 Mwe) advanced reactor designs.

1:15 p.m.–2:45 p.m.: Catawba and McGuire License Renewal Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Duke Energy Company regarding the license renewal application and draft Safety Evaluation Report for the Catawba Nuclear Station Units 1 and 2 and McGuire Nuclear Station Units 1 and 2.

2:45 p.m.–4 p.m.: Policy Issues Related to Advanced Reactor Licensing (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding changes to policy issues related to the licensing of advanced reactors resulting from the resolution of ACRS comments and recommendations included in its June 17, 2002 report.

4:15 p.m.–7 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, October 11, 2002

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Program Plan for Low-Power Shutdown (LPSD) Standardized Plant Analysis Risk (SPAR) Model Development and Cancellation of Revision 4i of SPAR Models (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the program plan for LPSD SPAR Model Development, the reasons for canceling plans for the development of revision 4i of the SPAR Models, and insights from the onsite review of the LPSD SPAR model for Surry Nuclear Plant Units 1 and 2.

10:15 a.m.–11:30 a.m.: Guidance for Performance-Based Regulation (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft NUREG/BR ''Guidance for Performance-Based Regulation.''

11:30 a.m.–11:45 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

1:15 p.m.–2:15 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The

Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

2:15 p.m.–3:15 p.m.: Report Regarding Recent Operating Events (Open)—Report by the cognizant ACRS member regarding recent operating events of interest.

3:15 p.m.–7 p.m.: Proposed ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports.

Saturday, October 12, 2002

8:30 a.m.–1 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit. The Committee will also discuss its plans for preparing a ''white paper'' on the use of PRA in the regulatory decisionmaking process.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50462). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Associate Director for Technical Support named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Associate Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Associate Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, 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 Dr. Sher Bahadur, Associate Director for Technical Support (301–415–0138), between 7:30 a.m. and 4:15 p.m., EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EDT, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: September 20, 2002.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–24437 Filed 9–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Decommissioning Questions and Answers Regarding Clarification of License Termination Guidance of the Nuclear Regulatory Commission's Office Nuclear Material Safety and Safeguards; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Nuclear Regulatory Commission's (NRC) Office of Nuclear Material Safety and Safeguards (NMSS) is announcing the availability of draft decommissioning questions and answers regarding clarification of license termination guidance, for public comment.

The Nuclear Energy Institute (NEI) and NRC staff identified an approach to clarify existing guidance associated with the License Termination Rule (10 CFR part 20, subpart E), in concert with NMSS'' decommissioning guidance consolidation project. Under this approach, NEI's License Termination Task Force (Task Force) generated questions (Qs) associated with decommissioning issues that are common to the industry. The Task Force also proposed answers (As) to the questions and submitted the Q&As to NRC staff for review. NRC staff reviewed the Q&As and the supporting technical bases and provided comments to NEI on September 28, 2001. An open meeting was held between NRC, NEI, and industry representatives on December 4, 2001, to discuss each Q&A and the technical issues to ensure that the questions were properly asked and answered and were supported by a defensible technical basis. NRC staff and NEI further developed the Q&As so that they adequately reflect NRC regulations and guidance and include a sound technical basis.

As a result of this cooperation, eight Q&As have been found acceptable by NRC staff. Seven of the Q&As were to be incorporated into the draft document ''Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria'' (NUREG–1757, Volume 2) to solicit public comment on them. However, two Q&As were inadvertently omitted. Therefore, five Q&As are included in Volume 2 of NUREG–1757, and three Q&As are included in the ''supplementary information'' section of this notice. Volume 2 of NUREG–1757 is being published for public comment on or close to the date of this notice. NRC is seeking public comment on the Q&As and Volume 2 of NUREG–1757 in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing the document is available to the NRC staff. These draft documents are being issued for comment only and are not intended for interim use. The NRC will review public comments received on the draft documents. Suggested changes will be incorporated, where appropriate, in response to those comments, and a final document will be issued for use. The final Q&As will be included in the text of the final document of Volume 2 of NUREG–1757.

DATES: Comments on this draft document should be submitted by December 26, 2002. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Members of the public are invited and encouraged to submit written comments to: Duane W. Schmidt, Project Manager, Office of Nuclear Material Safety and Safeguards, Mail Stop T–7F27, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays. Comments may also be sent electronically to *decomcomments@nrc.gov.* Copies of comments received may be examined at the ADAMS Electronic Reading Room on the NRC web site, and the NRC Public Document Room, 11555 Rockville Pike, Room O–1F21, Rockville, MD 20852. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION, CONTACT: Duane W. Schmidt, Mail Stop T–7F27, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6919; Internet: *dws2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Qeustion 5

What are acceptable methods to characterize embedded piping and buried piping?

Answer to Question 5

Several methods have been used to characterize the residual activity within embedded pipe, and these methods can be used for buried piping, as well. By definition, ''embedded piping'' is piping (*e.g.*, part of a plant system) that is found in buildings and encased in concrete floors and walls, while ''buried piping'' is piping (*e.g.*, culvert) that is buried in soils. To be found acceptable, the methods must each address the following issues:

- Radionuclides of interest and chosen surrogate
- Levels and distribution of contamination
- Internal surface condition of the piping
- Internal residues and sediments and their radiation attenuation properties
- Removable and fixed surface contamination
- Instrument sensitivity and related scan and fixed minimum detectable concentrations
- Piping geometry and presence of internally inaccessible areas/sections
- Instrument calibration
- Data quality objectives (DQOs)

An industry study (Cline, J. E., ''Embedded Pipe Dose Calculation Method,'' Electric Power Research Institute Report No. 1000951, November, 2000) evaluated several techniques for measuring the radiological contamination on the inside of embedded pipe. Measurement techniques included pipe crawlers, gamma-ray scanners, dose rate measurements with dose-to-curie computations, scraping samples with radiochemical analyses, and smear samples with radiochemical analyses. A brief description of these methods is provided below.

The pipe crawler uses a beta sensitive detection system that is inserted into the pipe with a cable. Spacers keep the detectors at a fixed distance from the pipe wall. Measurements can be made at various points or as a continuous scan within the pipe to provide a profile of the extent and distribution of the contamination. Scaling factors based on a laboratory radiochemistry analysis of the deposited material can be applied to the measurements to provide radionuclide quantities in the pipe.

The gamma-ray scanner uses a calibrated, collimated high-purity germanium or sodium iodide spectrometer to make external measurements on the pipe. This gamma-ray scanning yields an average concentration over the length of the pipe within the field of view of the detector. The sensitivity of this method may be limited by the thickness of the piping itself and concrete between the pipe and the detector. Some radionuclide identification is possible and scaling factors can be applied as discussed above for the pipe crawler.

The dose rate measurements are also made on the external surface of the walls or floors containing the embedded pipe using a sensitive gamma detector capable of reading in the roentgen per hour range. The dose rate readings may be used directly in determining compliance with the dose criteria or used to make dose-to-curie conversions based on other measurements providing radionuclide identification.

Radionuclide identification for the contamination in the pipe may be accomplished by smear or scraping samples and radiochemical analysis. The industry report compared radionuclide ratios determined by smears and by scrapings with those found by etching the surface of the pipe. The report concluded that either of these techniques yields radionuclide mixes that are representative of the average total deposits.

Each approach is useful in specific applications, and multiple methods might be used in complex facilities like power plants. Each method also has limitations and uncertainties that must be addressed.

Other useful information on embedded pipe characterization may be found in sources, such as the U.S. Department of Energy Innovative Technology Reports and case studies published in open literature.

Regardless of the source of the information, it is incumbent on the licensee to develop and document a comprehensive approach to embedded pipe and buried piping characterization that accounts for limitations and uncertainties, taking into account the Multi-Agency Radiation Survey and Site Investigation Manual (NUREG–1575, Rev. 1) guidance in developing the related DQOs. It should also specifically address each of the critical issues in the bulleted list above.

Question 9

Is the collection of additional characterization data, beyond that available from periodic radiation protection surveys, required in the license termination plan for structures, components, and soils that will be removed from the facility prior to license termination?

Answer to Question 9

No. In general, radiological data obtained during characterization surveys are used to determine the radiological status of the site, including facilities, buildings, surface and subsurface soils, and surface and ground water. In turn, this information is used to support the planning and design of final status surveys (FSS). In addition to providing the basis of the design of FSS, characterization surveys are used to support the following:

- Identification of remaining site dismantlement activities
- Development of new (or revisions to existing) remediation plans and procedures
- Revisions to decommissioning costs and trust fund
- Identification of environmental aspects not previously considered
- Revisions to the Environmental Report

Since the license termination process is only concerned with the status of facilities after the completion of all remediation activities, radioactivity associated with structures, components, and soils that will be removed from the facility and appropriately disposed of elsewhere, is not an issue as it cannot contribute to public dose controlled under 10 CFR 20.1402—''Radiological Criteria for Unrestricted Use.'' Therefore, additional characterization data need not be collected.

Question 10

Is characterization data required to support initial classification of Class 1 areas?

Answer to Question 10

Areas classified as Class 1 do not require characterization data to support that classification.

Note: Characterization data are needed to support decommissioning activities for all areas including:

- Determination of radionuclide distribution profiles and identification of surrogate radionuclides
- Dose modeling and development of derived concentration guideline levels
- Final status survey design and instrument selection
- Structuring the data quality objectives
- Assessment of spatial variability of radioactive contaminants on building surfaces and in surface and subsurface soils
- Assessment of whether ground water is impacted, using the results of the surface and subsurface soil characterization surveys
- Initially defining and changing the boundaries of Class 1 survey units with bordering and adjacent survey units
- Re-classification of survey units (using guidance in NUREG–1575, ''Multi-Agency Radiation Survey and Site Investigation Manual,'' and NUREG–1727, ''NMSS Decommissioning Standard Review Plan'')

Dated at Rockville, MD, this 20th day of September, 2002.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–24442 Filed 9–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Office of Nuclear Material Safety and Safeguards Consolidated Decommissioning Guidance: Decommissioning Process for Materials Licensees; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission's (NRC) Office of Nuclear Material Safety and Safeguards (NMSS) is announcing the availability of a final document ''Consolidated NMSS Decommissioning Guidance: Decommissioning Process for Materials Licensees'' (NUREG–1757, Vol. 1). This document provides guidance for planning and implementing the termination of licenses issued through NMSS's licensing programs. The guidance is intended for NRC staff, licensees, and the public. The guidance was developed in response to the NMSS performance goals, in the NRC's Strategic Plan, of: (1) making NRC activities and decisions more effective, efficient, and realistic; and (2) reducing unnecessary regulatory burden on stakeholders. The guidance in final NUREG–1757, Volume 1, should be used by fuel cycle, fuel storage, and materials licensees in preparing decommissioning license amendment requests, decommissioning plans, and related compliance documents. NRC staff will use the policies and procedures discussed in Volume 1 to evaluate a licensee's decommissioning actions.

ADDRESSES: NUREG–1757, Volume 1, is available for inspection and copying for a fee at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (First Floor), Rockville, Maryland. The Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays. NUREG–1757, Volume 1, is also available electronically from the ADAMS Electronic Reading Room on the NRC Web site at: *http://www.nrc.gov/reading-rm/adams.html,* and on the NRC Web site at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff*.

Copies of NUREG–1757, Volume 1, may also be purchased from one of these two sources: (1) The Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–0001; Internet: *http://bookstore.gpo.gov/;* telephone: 202–512–1800; fax: 202–512–2250; (2) The National Technical Information Service, Springfield, VA 22161–0002, Internet: *www.ntis.gov;* telephone 1–800–553–6847 or, locally, 703–605–6000.

FOR FURTHER INFORMATION, CONTACT: Duane W. Schmidt, Mail Stop T–7F27, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6919; Internet: *dws2@nrc.gov*.

SUPPLEMENTARY INFORMATION: As part of its redesign of the materials license program, NMSS is consolidating and updating numerous decommissioning guidance documents into a three-volume NUREG report. The three volumes are as follows: (1) Decommissioning Process for Materials Licensees; (2) Characterization, Survey, and Determination of Radiological Criteria; and (3) Financial Assurance, Recordkeeping, and Timeliness. Volume 1 of this NUREG series, entitled ''Consolidated NMSS Decommissioning Guidance: Decommissioning Process for Materials Licensees,'' is the first of these three volumes and is intended for use by applicants, licensees, NRC license reviewers, other NRC personnel, and Agreement State staff.

The approaches to license termination described in Volume 1 of NUREG–1757 will help to identify the information (subject matter and level of detail) needed to terminate a license by considering the wide range of radioactive materials users licensed by NRC. Volume 1 of the NUREG provides guidance for planning and implementing the termination, under the License Termination Rule (10 CFR part 20, subpart E), of licenses issued through NMSS's licensing programs. Volume 1 incorporates the risk-informed and performance-based alternatives of the rule. Volume 1 updates and builds upon the risk-informed approach in, and in part incorporates, the NMSS Decommissioning Handbook (NUREG/BR–0241, ''NMSS Handbook for Decommissioning Fuel Cycle and Materials Facilities,'' March 1997). Volume 1 also incorporates the parts of the ''NMSS Decommissioning Standard Review Plan,'' NUREG–1727, September 2000, that provide guidance for developing those parts of a decommissioning plan addressing general site description and current radiological conditions; decommissioning activities, management, and quality assurance; and modifications to decommissioning programs and procedures. This final Volume 1 describes and makes available to the public (1) methods acceptable to the NRC staff in implementing specific parts of the Commission's regulations; (2) techniques and criteria used by the staff in evaluating decommissioning actions; and (3) guidance to licensees responsible for decommissioning NRC-licensed sites.

The guidance in final NUREG–1757, Volume 1, should be used by fuel cycle, fuel storage, and materials licensees in preparing decommissioning license amendment requests, decommissioning plans, and related compliance documents. Other NRC licensees, *e.g.*, uranium recovery facilities and reactors, may find this information useful, but they are not the subject of this NUREG. NRC staff will use the policies and procedures discussed in Volume 1 to evaluate a licensee's decommissioning actions. This NUREG does not substitute for regulations, and compliance with it is not required. Methods and solutions different from those in this NUREG will be acceptable, if they provide a basis for concluding that the decommissioning

actions are in compliance with the Commission's regulations.

Further information on the overall decommissioning guidance consolidation and updating project can be found in the **Federal Register** notice publishing the plan for the project (66 FR 21793).

Dated at Rockville, MD, this 20th day of September, 2002.

For the Nuclear Regulatory Commission

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–24440 Filed 9–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Office of Nuclear Material Safety and Safeguards Consolidated Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Nuclear Regulatory Commission's (NRC) Office of Nuclear Material Safety and Safeguards (NMSS) is announcing the availability of a draft document ''Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria'' (NUREG–1757, Vol. 2), for public comment. This document provides guidance for compliance with the radiological criteria for termination of licenses. The guidance is intended for NRC staff, licensees, and the public. The guidance is being developed in response to the NMSS performance goals, in the NRC's Strategic Plan, of: (1) making NRC activities and decisions more effective, efficient, and realistic; and (2) reducing unnecessary regulatory burden on stakeholders. NRC is seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing the document is available to the NRC staff. This draft document is being issued for comment only and is not intended for interim use. The NRC will review public comments received on the draft document. In response to those comments, suggested changes will be incorporated, where appropriate, and a final document will be issued for use.

DATES: Comments on this draft document should be submitted by December 26, 2002. Comments received after that date will be considered to the extent practicable.

ADDRESSES: NUREG–1757, Volume 2, is available for inspection and copying for a fee at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (First Floor), Rockville, Maryland. NUREG–1757, Volume 2, is also available electronically from the ADAMS Electronic Reading Room on the NRC Web site at: *http://www.nrc.gov/reading-rm/adams.html*, and on the NRC Web site at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff*.

A free single copy of NUREG–1757, Volume 2, will be available to interested parties until the supply is exhausted. Such copies may be requested by writing to the U.S. Nuclear Regulatory Commission, Distribution Services, Washington, DC 20555–0001 or submitting e-mail to *distribution@nrc.gov*.

Members of the public are invited and encouraged to submit written comments to: Duane W. Schmidt, Project Manager, Office of Nuclear Material Safety and Safeguards, Mail Stop T–7F27, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays. Comments may also be sent electronically to *decomcomments@nrc.gov*. Copies of comments received may be examined at the ADAMS Electronic Reading Room on the NRC web site, and in the NRC Public Document Room, 11555 Rockville Pike, Room O–1F21, Rockville, MD 20852. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION, CONTACT: Duane W. Schmidt, Mail Stop T–7F27, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6919; Internet: *dws2@nrc.gov*.

SUPPLEMENTARY INFORMATION: As part of its redesign of the materials license program, NMSS is consolidating and updating numerous decommissioning guidance documents into a three-volume NUREG report. The three volumes are as follows: (1) Decommissioning Process for Materials Licensees; (2) Characterization, Survey, and Determination of Radiological Criteria; and (3) Financial Assurance, Recordkeeping, and Timeliness. Volume 2 of this NUREG series, entitled ''Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria,'' is the second of these three volumes and, when finalized, is intended for use by applicants, licensees, NRC license reviewers, other NRC personnel, and Agreement State staff.

The approaches to license termination described in Volume 2 of NUREG–1757 will help to identify the information (subject matter and level of detail) needed to terminate a license by considering the wide range of radioactive materials users licensed by NRC. Volume 2 of the NUREG addresses compliance with the radiological criteria for license termination of the License Termination Rule (10 CFR part 20, subpart E) and incorporates the risk-informed and performance-based alternatives of the rule. Volume 2 updates and builds upon the risk-informed approach used in the NMSS Decommissioning Standard Review Plan (NUREG–1727, September 2000), and, in whole or in part, incorporates the parts of NUREG–1727 that provide guidance for demonstrating compliance with Subpart E. This draft Volume 2 describes and makes available to the public (1) methods acceptable to the NRC staff in implementing specific parts of the Commission's regulations; (2) techniques and criteria used by the staff in evaluating decommissioning actions; and (3) guidance to licensees responsible for decommissioning NRC-licensed sites.

When published as a final report, the guidance in draft NUREG–1757, Volume 2, should be used by fuel cycle, fuel storage, materials, and reactor licensees in preparing decommissioning license amendment requests, decommissioning plans, and related compliance documents. Other NRC licensees, *e.g.*, uranium recovery facilities, may find this information useful, but they are not the subject of this NUREG. When finalized, NRC staff will use the policies and procedures discussed in Volume 2 to evaluate a licensee's decommissioning actions. This NUREG will not substitute for regulations, and compliance with it will not be required. Methods and solutions different from those in this NUREG will be acceptable, if they provide a basis for concluding that the decommissioning actions are in compliance with the Commission's regulations.

Further information on the overall decommissioning guidance consolidation and updating project can be found in the **Federal Register** notice publishing the plan for the project (66 *FR* 21793).

Commentors are encouraged to submit their written comments to the addresses listed above. To ensure efficient and complete comment resolution, commentors are requested to reference the section, page, and line numbers of the document to which the comment applies, if possible.

Dated at Rockville, MD, this 20th day of September, 2002.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–24441 Filed 9–25–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Environmental Safeguards, Inc., To Withdraw Its Common Stock, $.001 Par Value, From Listing and Registration on the American Stock Exchange LLC File No. 1–13869

September 20, 2002.

Environmental Safeguards, Inc., a Nevada corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.001 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Nevada, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors (''Board'') of the Issuer unanimously approved a resolution on August 30, 2002 to withdraw the Issuer's Security from listing on the Amex. The Board considered the critical cash needs, annual cost, and the questionable value to the shareholders in making its decision to withdraw the Security from listing on the Amex. The Board felt that it is in the best interest of the shareholders to voluntarily withdraw from the Amex and seek quotation of its Security on the OTC Bulletin Board. The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under section 12(b) of the Act [3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before October 11, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–24474 Filed 9–25–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l* (g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of KBK Capital Corporation To Withdraw Its Common Stock, $.01 par Value, From Listing and Registration on the American Stock Exchange LLC File No. 1–14152

September 20, 2002.

KBK Capital Corporation, a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors (''Board'') of the Issuer approved a resolution on August 22, 2002 to withdraw the Issuer's Security from listing on the Amex. In making the decision to withdraw its Security from the Amex, the Board notes that the Security is held by less than three hundred (300) persons. In addition, there is low trading volume in the Security, and the extent and nature of the Security is erratic and thin. The Board states that it is not in the best interest of the Issuer to continue to be subject to the limitations and cost associated with maintaining the listing requirements for its Security. The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under section 12(b) of the Act,[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before October 11, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–24473 Filed 9–25–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting: Notice of Application of KBK Capital Corporation to Withdraw Its Common Stock, $.01 Par Value, from Listing and Registration on the Pacific Exchange, Inc., File No. 1–14152

September 20, 2002.

KBK Capital Corporation, a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d–2(d)

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the Pacific Exchange, Inc. (''PCX'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of the PCX governing an issuer's voluntary withdrawal of a security from listing and registration and has complied with all applicable laws in effect in the State of Delaware, in which it is incorporated.

The Board of Directors (''Board'') of the Issuer approved a resolution on August 22, 2002 to withdraw the Issuer's Security from listing on the PCX. In making the decision to withdraw its Security from the PCX, the Board notes that the Security is held by less than three hundred (300) persons. In addition, there is low trading volume in the Security, and the extent and nature of the Security is erratic and thin. The Board states that it is not in the best interest of the Issuer to continue to be subject to the limitations and cost associated with maintaining the listing requirements for its Security. The Issuer's application relates solely to the Security's withdrawal from listing on the PCX and from registration under section 12(b) of the Act,[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before October 11, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–24483 Filed 9–25–02; 8:45 am]

BILLING CODE 8010–01–M

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of KBK Capital Trust I To Withdraw Its 9.50% Trust Preferred Securities, From Listing and Registration on the American Stock Exchange LLC, File No. 1–14152

September 20, 2002.

KBK Capital Trust I, a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 9.50% Trust Preferred Securities (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors (''Board'') of the Issuer approved a resolution on August 22, 2002 to withdraw the Issuer's Security from listing on the Amex. In making the decision to withdraw its Security from the Amex, the Board notes that the Security is held by less than three hundred (300) persons. In addition, there is low trading volume in the Security, and the extent and nature of the Security is erratic and thin. The Board states that it is not in the best interest of the Issuer to continue to be subject to the limitations and cost associated with maintaining the listing requirements for its Security. The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under section 12(b) of the Act,[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before October 11, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–24472 Filed 9–25–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46515; File No. SR–PCX–2002–53]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to New Order Types Called ''Midpoint Cross Order'' and ''Midpoint Directed Fill'' and a New Interpretation Under PCXE Rule 7.6(a)

September 19, 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 5, 2002, the Pacific Exchange, Inc. (''PCX'' 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 PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX, through its wholly-owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend its rules governing the Archipelago Exchange, the equities trading facility of PCXE, by: (1) Adopting two new order types—a Midpoint Crossing Order and a Midpoint Directed Fill; and (2) adding interpretive language to the Trading Differentials under PCXE Rule 7.6 to provide for separate minimum trading differentials for these new order types. The Exchange's proposed rule change would permit the aforementioned order types to receive an execution under specified circumstances at price increments finer than the minimum trading differential permitted under the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange's current rules for other transactions on the Archipelago Exchange. The text of the rule change is available at the Office of the Secretary of the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Archipelago Exchange trading facility (''ArcaEx'') commenced operations on March 22, 2002, replacing the PCXE's traditional trading floor facilities.[3] As part of its continuing effort to enhance participation in its electronic auction market, the Exchange proposes to adopt two new order types called a ''Midpoint Cross Order'' and a ''Midpoint Directed Fill,'' which would permit Equity Trading Permit (''ETP'') Holders[4] and Sponsored Participants[5] (collectively ''Users'') to receive executions priced between the NBBO at price increments finer than the minimum trading differential permitted under the Exchange's current rules.

The Exchange proposes to add PCXE Rule 7.31(y) to define a Midpoint Cross Order. A Midpoint Cross Order is a Cross Order[6] that is priced at the midpoint of the NBBO. If at the time of order entry a locked or crossed market exists in the security, the ArcaEx trading system would reject the Midpoint Cross Order. The Exchange also proposes to add PCXE Rule 7.31(z) to define a Midpoint Directed Fill. A Midpoint Directed Fill is a Directed Fill[7] that is priced at the midpoint of the NBBO. When a locked or crossed market exists in the security, the inbound Directed Order would bypass the Directed Order Process[8] and immediately enter the Display Order Process for execution.[9] In the Directed Order Process, the User's Directed Order would be executed against a Directed Fill, which is the order of the User's designated market maker. Specifically, for a market maker to interact with incoming Directed Orders, the market maker must submit a standing instruction to ArcaEx for the parameters of a Directed Fill, including, but not limited to, the size of the order, the Users who may send such market maker a Directed Order, the price improvement algorithm and the period of time the instruction is effective. The proposed Midpoint Directed Fill would be an additional feature of the ArcaEx system's price improvement algorithm, which would enable market makers to match automatically against incoming Directed Orders at the midpoint price between the NBBO.

The Exchange's current rules governing minimum price variations and minimum price improvement increments (''MPII'')[10] for securities traded on the ArcaEx are set forth in PCXE Rule 7.6. The PCXE's current minimum price variation and MPII is $0.01. The proposed rule change provides an exception to PCXE Rule 7.6 that would permit Midpoint Cross Orders and Midpoint Directed Fills to receive executions at price increments finer than the minimum trading differential permitted under the Exchange's rules. In order to implement these new order types, the Exchange is proposing to add interpretive language to address situations where the midpoint of the NBBO bid/ask differential is a subpenny price (*e.g.*, the midpoint of an NBBO of $20–$20.03 is $20.015). In such circumstances, the proposed rule would permit Midpoint Cross Orders and Midpoint Directed Fills to be executed and reported in increments as small as one-half of the minimum price variation (*i.e.*, as $0.005).[11] Furthermore, in situations where the NBBO bid/ask differential is one minimum price variation (*i.e.*, $0.01), Midpoint Cross Orders and Midpoint Directed Fills may be executed in increments of one-half of the minimum price variation (*i.e.*, as $0.005), as an exception to the MPII as prescribed in current PCXE Rule 7.6(a), Commentary .06.

The Exchange is also making minor technical changes to Rule 7.6(a), Commentary .05 by eliminating obsolete references and making changes to the text so that the rule will conform to a parallel rule as set forth in Rule 7.6(a), Commentary .03. Users of ArcaEx have requested a midpoint-pricing mechanism for Cross Orders and Directed Fills so that a midpoint trade can take place in odd-spread markets and $0.01 markets, as described above.[12] To achieve this, the PCX proposes to allow such order types designated for midpoint pricing to be executed at finer trading differentials than $0.01. The PCX believes that a finer trading differential for executions of Midpoint Cross Orders and Midpoint Directed Fills will facilitate enhanced order interaction and foster price competition. Accordingly, the Exchange believes that the proposal promotes a more efficient and effective market operation, and enhances the investment choices available to investors over a broad range of trading scenarios.

The Exchange notes that the proposal to trade at finer price increments applies only to Midpoint Cross Orders and Midpoint Directed Orders. The rule change is not intended to permit Users to generally display quotes, enter orders, or execute trades in price increments less than $0.01. In other words, trades resulting from the midpoint-pricing mechanism may be executed on the basis of $0.005 increments; however, it will still not be possible to enter orders, bids, or offers in $0.005 increments.

[3] *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001), File No. SR–PCX–00–25 (ArcaEx Approval Order).

[4] *See* PCXE Rule 1.1(n).

[5] A ''Sponsored Participant'' means ''a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29.'' *See* PCXE Rule 1.1(tt).

[6] A Cross Order is defined as a two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the cross price), subject to price improvement requirements. *See* PCXE Rule 7.31(s).

[7] *See* PCXE Rule 7.31(j) (definition of ''Directed Fill'').

[8] The Directed Order Process is the first step in the ArcaEx execution algorithm. Through this Process, Users may direct an order to a Market Maker with whom that they have a relationship and the Market Maker may execute the order. To access this process, the User must submit a Directed Order, which is a market or limit order to buy or sell that has been directed to a particular market maker by the User. *See* PCXE Rule 7.37(a) (description of ''Directed Order Process'').

[9] The Display Order Process is the second step in the ArcaEx execution algorithm. In this process, the ArcaEx system matches an incoming marketable order against orders in the Display Order Process at the display price of the resident order for the total size available at that price or for the size of the incoming order. *See* PCXE Rule 7.37(b) (description of ''Display Order Process'').

[10] The minimum price improvement increment (''MPII'') on ArcaEx is equal to $0.01 or 10% of the NBBO spread, whichever is greater. *See* PCXE Rule 7.6(a), Commentary .06. Under current PCXE rules, the MPII requirements must be satisfied in the execution of Cross Orders and Directed Orders. *See* PCXE Rules 7.31(j) and (s).

[11] *See* proposed PCXE Rule 7.6(a), Commentary .07.

[12] Users that use indexation strategies are particularly interested in using the midpoint-pricing feature. Also, the Exchange believes that the quotation spreads (the difference between the highest bid quotation and the lowest offer quotation) in the most liquid Nasdaq securities are $0.01 for a substantial majority of the trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[13] of the Act, in general, and further the objectives of Section 6(b)(5),[14] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with provisions of Section 11A(a)(1)(B) of the Act, which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX believes that the proposed rule change does not 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

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

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 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 also will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–53 and should be submitted by October 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–24411 Filed 9–25–02; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4139]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Bosnia and Herzegovina Undergraduate Development Program

Summary: The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Bosnia and Herzegovina Undergraduate Development Program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to administer the placement, monitoring, evaluation, follow-on, and alumni activities for the FY 2003 Bosnia and Herzegovina Undergraduate Development Program. Once cooperative agreement will be awarded to administer the program. Proposals should include provisions for the recruitment and selection of FY 2003 participants. Organizations with less than four years of experience in conducting international exchange programs are not eligible for this competition.

Program Information

The Bosnia and Herzegovina Undergraduate Development Program (herein referred to as the BUDP Program) provides scholarships for one-year, non-degree study at U.S. institutes of higher education to outstanding students of Bosnia and Herzegovina. Scholarships are available in the fields of agriculture, American studies, business administration, criminal justice studies, economics, environmental resource management, journalism/communication, and political science. Scholarships are granted to students who have completed at least two years of study at an accredited university in Bosnia and Herzegovina. Students must be citizens of Bosnia and Herzegovina. BUDP participants will be enrolled in one-year, non-degree programs at four-year colleges and universities. Students will enhance their academic education with participation in community service and an internship. Interested organizations should read the entire **Federal Register** announcement for all information prior to preparing a proposal. Programs must comply with J–1 Visa regulations. Please refer to the Solicitation Package for further information. Pending the availability of funds, it is anticipated that this grant awards will begin in January 2003.

Budget Guidelines

The Bureau anticipates awarding one grant of approximately $400,000 under this grant competition. Bureau grant guidelines require that organizations with less than four years of experience in conducting international exchanges be limited to $60,000 in Bureau funding. Therefore, organizations that cannot demonstrate at least four years experience in conducting international exchanges are ineligible to apply under this competition. Applicants must submit a comprehensive budget for the entire program. The level of funding for FY 2003 is uncertain, but is anticipated to be approximately $400,000. Based on this figure, applicant organizations should submit a budget which will fund 10–15 participants. ECA anticipates awarding one grant under this competition. Applicant organizations are encouraged, through cost sharing and other methods, to provide for as many scholarships as possible based on approximated funding. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please

refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/EUR–03–09.

For Further Information, Contact: The Office of Academic Exchange Programs, ECA/A/E/EUR, Room 246, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Phone: 202–205–0525; Fax: 202–260–4060, *oborecka@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Olivia Borecka on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, November 8, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/EUR–03–02, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Office of Public Affairs at the U.S. Embassy in Sarajevo for review, with the goal of reducing the time it takes to get the embassy's comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulstions Governing the J VISA

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov or from:* United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 401–9810. FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Affairs Sections overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Development and Management:* Proposals should exhibit originality, substance, precision, innovation, and relevance to Bureau mission. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the organization will meet the program's objectives. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Proposals should also include creative ways to involve students in their U.S. communities.

3. *Support of Diversity:* Proposal should demonstrate the recipient's commitment to promoting the awareness and understanding of both

geographic and ethnic diversity in Bosnia and Herzegovina and the United States.

4. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

5. *Alumni Tracking and Follow-on:* Proposals should provide a plan for effective tracking of participants after the completion of the program. Proposals should include a plan for continued follow-on activity which insures that ECA supported programs are not isolated events, but have meaning and scope beyond the time the actual exchange took place.

6. *Project Evaluation:* Proposals should include a plan to evaluate the program's success, both during and after the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique, plus a description of methodologies that can be used to link outcomes to original project objectives. The grantee organization will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

7. *Cost-effectiveness and Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through the Support for East European Democracy (SEED) Act of 1989.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: September 18, 2002.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–24475 Filed 9–25–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4140]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Educational Information Centers in Eurasia

Summary: The Office of Global Educational Programs, Educational Information and Resources Branch of the Bureau of Educational and Cultural Affairs announces an open competition for Educational Information Centers in Eurasia. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3) may submit proposals to operate educational information centers in the following cities in Eurasia: Yerevan, Armenia; Baku, Azerbaijan; Minsk, Belarus; Tbilisi, Georgia; Almaty and Astana, Kazakhstan; Bishkek, Kyrgyz Republic; Chisinau, Moldova; Moscow, Novosibirsk, St. Petersburg, and Vladivostok, Russia; Dushanbe, Tajikistan; Ashgabat, Turkmenistan; Kiev, Ukraine; and Tashkent, Uzbekistan. The educational information centers would be a part of the network of approximately 450 Department of State-affiliated centers worldwide. These centers provide comprehensive and unbiased information to interested students, scholars, and other individuals about study opportunities in the U.S.

Program Information

Overview

The education information centers in Eurasia must provide access to comprehensive and unbiased information about study opportunities in the U.S. Services provided by the centers must include group informational sessions as well as individual advising. The centers should provide accurate information and advising on the following topics: all accredited U.S. colleges, universities, and other higher education institutions; accreditation issues; the application process to a U.S. university; majors and fields of study; testing requirements; life in the U.S.; scholarship programs and financial aid; visa requirements, and pre-departure orientation. Centers should also provide information on grant opportunities sponsored by the USG and other institutions and organizations. The Bureau will provide a selection of reference books and materials to each center. Educational advisers at the centers will be eligible to apply for Bureau-sponsored professional development opportunities and training events.

Guidelines

Pending availability of funds, the period of this grant is January 1, 2003 to December 31, 2003. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Please refer to Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs. Applicants must submit a comprehensive budget for each individual educational information center in the proposal. Applicants may submit a proposal for one, several, or all of the centers listed. Awards may not exceed the following amounts for each educational information center:

Yerevan, Armenia—$30,000;
Baku, Azerbaijan—$20,000;
Minsk, Belarus—$20,000;
Tbilisi, Georgia—$20,000;
Almaty, Kazakhstan—$22,000;
Astana, Kazakhstan—$17,000;
Bishkek, Kyrgyz Republic—$17,000;
Chisinau, Moldova—$12,000;
Moscow, Russia—$180,000;
Novosibirsk, Russia—$20,000;
St. Petersburg, Russia—$32,000;
Vladivostok, Russia—$20,000;
Dushanbe, Tajikistan—$15,000;
Ashgabat, Turkmenistan—$15,000;
Kiev, Ukraine—$50,000;
Tashkent, Uzbekistan—$25,000.

All administrative and indirect costs must be included in the maximum award amount for each center. The budgets must provide a breakdown of administrative and program costs. Allowable costs for the program include the following:

(1) Educational advising staff salaries and benefits;

(2) Office supplies and expenses, including rent, communications, postage and shipping;

(3) Outreach and publicity costs;

(4) Indirect costs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/A–03–07.

For Further Information, Contact: The Educational Information and Resources Branch, ECA/A/S/A, room 349, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone: 202–619–4731, fax: 202-404–1433, *http://exchanges.state.gov/education/educationusa* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Sharen Sheehan on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Thursday, October 31, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 5 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/A–03–07, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs sections at the U.S. Embassies in Eurasia for their review.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to, ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J VISA

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 401–9810. FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy sections overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to

the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Ability To Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

2. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration and program content.

3. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

4. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful international education programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

6. *Cost-Effectiveness:* The overhead and administrative components of the proposal should be kept as low as possible. All other items should be necessary and appropriate. Proposals are encouraged to include a plan for cost-defrayment and income generation, where possible.

7. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' Partial funding for the program above is provided through the FREEDOM Support Act.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: September 18, 2002.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–24476 Filed 9–25–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13396]

Great Lakes Pilotage Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) and its Subcommittee on Technology will meet to discuss various issues relating to pilotage on the Great Lakes. The meeting will be open to the public.

DATES: The Subcommittee will meet on Thursday, October 10, 2002, from 2:30 p.m. to 5:30 p.m. GLPAC will meet on Friday, October 11, 2002, from 8 a.m. to 4 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before October 8, 2002. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before October 2, 2002.

ADDRESSES: GLPAC will meet in the Duluth Seaway Port Authority's Board Room at 1200 Port Terminal Drive, Duluth, MN 55802. Send written material and requests to make oral presentations to Margie Hegy, Commandant (G–MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Margie Hegy, Executive Director of GLPAC, telephone 202–267–0415, fax 202–267–4700.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings

Subcommittee on Technology. The agenda includes the following:

(1) Assessment of technology needs of U.S. pilots on the U.S. Great Lakes.

(2) Assessment of training needs of U.S. pilots on the U.S. Great Lakes.

(3) Discussion of funding mechanisms—Capital improvement funds, surcharges, pilot rate, etc.

Great Lakes Pilotage Advisory Committee (GLPAC). The agenda includes the following:

(1) Update on Bridge Hour Study.

(2) Discussion on Pilotage Office Relocation Study.

(3) Progress report from Technology Subcommittee.

(4) Review definition of ''designated'' and ''undesignated'' waters.

(5) Pilot Boats—Status, standards, acquisition process, and alternatives.

The GLPAC meetings follow a public meeting on a bridge hour study being conducted on Great Lakes pilotage. This meeting will be held on October 10, 2002, from 8:30 a.m. to 11:30 a.m. at the same location.

Procedural

The meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than October 8, 2002. Written material for distribution at the meeting should reach the Coast Guard

no later than October 8, 2002. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 10 copies to Margie Hegy at the address in the **ADDRESSES** section no later than October 2, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: September 19, 2002.

Joseph J. Angelo,

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

[FR Doc. 02–24456 Filed 9–25–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13191]

Review of Great Lakes Pilotage Bridge Hour Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; additional information.

SUMMARY: This notice provides the time, location and point of contact for the October 10, 2002, public meeting in Duluth, MN on the Great Lakes Pilotage Bridge Hour Standards Review. The original meeting schedule was published on August 26, 2002 (67 FR 54836) without the details for the Duluth meeting because they were not available at that time.

DATES: The meeting will be held on October 10, 2002, 8:30 a.m. to 11:30 a.m., in Duluth, MN.

Written material and requests to make oral presentations should reach the Coast Guard not later than October 8, 2002. The meeting may close early if all business is finished.

ADDRESSESES: The meeting will be held at the Duluth Seaway Port Authority, 1200 Port Terminal Drive, Duluth, MN 55802.

Send requests to make oral presentations, comments, and written material for distribution at the October 10, 2002, public meeting to Ms. Margie Hegy, Commandant (G–MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice, and the convening letter for the Coast Guard's review of Great Lakes Pilotage bridge hour standards, including review questions, are available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Margie Hegy, telephone 202–267–0415, fax 202–267–4700.

SUPPLEMENTARY INFORMATION:

The Review

The review is being conducted to study the Coast Guard's management and methodology for the development of Great Lakes pilotage bridge hour standards and to produce a recommendation of the appropriate standards. Bridge hour standards are a critical element in determining the number of U.S. pilots needed to provide service to commercial vessels engaged in foreign trade on the Great Lakes. The current bridge hour standards are published in the appendix, Ratemaking Analyses and Methodology, to 46 CFR Part 404.

Procedural

RADM J. T. Riker, USCGR will chair the public meeting. The public meeting is open for public participation. Please note that the meeting may close early if all business is finished. The Speaker's time may be limited. Please come prepared with a written copy of remarks to be entered into the record in the event that you are not able to complete them verbally. If you would like to make an oral presentation at the meeting, please notify Ms. Margie Hegy no later than October 8, 2002. If you would like a copy of your material distributed, please submit 15 copies to Mrs. Margie Hegy no later than October 8, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at a meeting, contact Ms. Margie Hegy as soon as possible.

Dated: September 19, 2002.

Joseph J. Angelo,

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

[FR Doc. 02–24457 Filed 9–25–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Electronic Flight Bag (EFB) Advisory Circular 120–76; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

Name: Electronic Flight Bag (EFB) Advisory Circular 120–76 Meeting.

Time and Date: The meeting will be held Thursday, October 10, 2002. The meeting will convene at 9 a.m. and will conclude by 5 p.m.

Place: The meeting will be held at the offices of Advanced Management Technology, Incorporated (AMTI), 1515 Wilson Blvd., Suite 1100, Arlington, VA, 22209.

Status: Attendance is open to the interested public, but may be limited to the space available. Submission of written comments and presentations are required so that issues are documented properly for the record. The public may submit written comments in lieu of attendance. Comments should be forwarded to the individual listed under ''For Further Information Contact'' section

Purpose: On July 9, 2002, the Federal Aviation Administration (FAA) issued FAA Advisory Circular 120–76, ''Guidelines for the Certification, Airworthiness, and Operational Approval of Electronic Flight Bag Computing Devices''. In writing the original version of this AC, the Agency recognized an urgent need to provide the aviation community with timely EFB guidance, but also recognized that future revisions of this AC might be needed. To facilitate this, the FAA is planning to hold a meeting to identify issues with the AC and to establish and identify priorities and processes to achieve early operational use of additional EFB applications and/or design features. The purpose of this Public Meeting is:

1. To solicit input from the user-community,
2. To achieve a better understanding, cooperation, and consensus on EFB concepts,
3. To identify proper forums for technical standards guidance development,
4. To propose specific implementation approaches, and
5. To develop schedules to resolve outstanding technical issues.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Livack, Federal Aviation Administration, AFS–400, Suite 4100, 470 L'Enfant Plaza, Washington, DC 20024. Telephone (202) 385–4619. E-mail: *garret.livack@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting to identify EFB issues that would help in future development

of EFB guidance. The scope of this meeting is to identify technical and content-oriented issues, then establish and identify resolution paths, priorities and processes to achieve early operational approval of additional EFB applications and/or design features.

Issued in Washington, DC, on September 17, 2002.

Hank Cabler,

Manager, AFS–430 (Acting).

[FR Doc. 02–24448 Filed 9–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Electronic Flight Bag (EFB) Advisory Circular 120–76; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: On July 9, 2002, the Federal Aviation Administration (FAA) issued FAA Advisory Circular 120–76, ''Guidelines for the Certification, Airworthiness, and Operational Approval of Electronic Flight Bag Computing Devices.'' In writing the original version of this AC, the Agency recognized an urgent need to provide the aviation community with timely EFB guidance, but also recognized that future revisions of this AC might be needed. To facilitate this, the FAA is planning to hold a meeting to identify issues with the AC and to establish and identify priorities and processes to achieve early operational use of additional EFB applications and/or design features. The purpose of this Public Meeting is to solicit input from the user-community and to achieve a better understanding, cooperation, and consensus on EFB concepts, to identify proper forums for technical standards guidance development, and to propose specific implementation approaches and schedules to resolve outstanding technical issues.

DATES: The meeting will be held Thursday, October 10, 2002. The meeting will convene at 9 a.m. and will conclude at 5 p.m.

ADDRESSES: The meeting will be held at the offices of Advanced Management Technology, Incorporated (AMTI), 1515 Wilson Blvd., Suite 1100, Arlington, VA, 22209.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Livack, Federal Aviation Administration, AFS–400, 800 Independence Avenue, NW., Washington, DC 20591. Telephone: (202) 385–4619. E-mail: *garret.livack@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting to identify EFB issues that would help in future development of EFB guidance. The scope of this meeting is to identify technical and content-oriented issues, then establish and identify resolution paths, priorities, and processes to achieve early operational approval of additional EFB applications and/or design features. Attendance is open to the interested public, but may be limited to the space available. Submission or written comments and presentations are required so that issues are documented properly for the record. The public may submit written comments in lieu of attendance. Comments should be forwarded to the individual listed in **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC, September 18, 2002.

Louis C. Cusimano,

Deputy Director, Flight Standards Service.

[FR Doc. 02–24454 Filed 9–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Government/Industry Aeronautical Charting Forum Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the bi-meeting of the Federal Aviation Administration's Government/Industry Aeronautical Charting Forum (ACF) to discuss informational content and design of aeronautical charts and related products, as well as instrument flight procedures policy and criteria.

DATES: The ACF is separated into two distinct groups. The Instrument Procedures Group will meet October 21 and 22, 2002 from 8:30 a.m. to 4:30 p.m. The Charting Group will meet October 23 and 24 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Air Line Pilots Association, 535 Herndon Parkway, Herndon, VA 20172.

FOR FURTHER INFORMATION CONTACT: For information relating to the Instrument Procedures Group, contact Thomas E. Schneider, Flight Procedures Standards Branch, AFS–420, 6500 South MacArthur Blvd., PO Box 25082, Oklahoma City, OK 73125; telephone (405) 954–5852 fax: (405) 954–2528. For information relating to the Charting Group, contact Richard V. Powell, FAA, Air Traffic Airspace Management, ATA–100, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8790, fax: (202) 493–4266.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Government/Industry Aeronautical Charting Forum to be held from October 21, 2002 to October 24, 2002 from 8:30 a.m. to 4:30 p.m. at the Air Line Pilots Association, 535 Herndon Parkway, Herndon, VA 20172.

The Instrument Procedures Group agenda will include briefings and discussions on recommendations regarding pilot procedures for instrument flight, as well as criteria, design, and developmental policy for instrument approach and departure procedures.

The Charting Group agenda will include briefings and discussions regarding recommendations regarding aeronautical charting specifications, flight information products, as well as new aeronautical charting and air traffic initiatives.

Attendance is open to the interested public, but will be limited to the space available.

The public must make arrangements by September 23, 2002, to present oral statements at the meeting. The public may present written statements and/or new agenda items to the committee by providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by September 27, 2002. Public statements will only be considered if time permits.

Issued in Washington, DC, on September 20, 2002.

Richard V. Powell,

Co-Chair, Government/Industry, Aeronautical Charting Forum.

[FR Doc. 02–24455 Filed 9–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Huntsville International Airport, Huntsville, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Huntsville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 28, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Luther H. Roberts, Jr., AAE, Deputy Director of the Huntsville—Madison County Airport Authority, at the following address: 1000 Glenn Hearn Boulevard, Box 20008, Huntsville, AL 35834.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Huntsville-Madison County Airport Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Keafur Grimes, Program Manager, Jackson Airport District Office, 100 West Cross Street, Jackson, MS 29308–2307, (601) 664–9886. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Huntsville International under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 8, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Huntsville-Madison County Airport Authority was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, not later than October 24, 2002.

The following is a brief overview of the application.

PFC Application No.: 02–12–C–00–HSV.

Level of the proposed PFC: $4.50.

Proposed charge effective date: November 1, 2002.

Proposed charge expiration date: November 1, 2004.

Total estimated net PFC revenue: $2,649,591.

Brief description of proposed project(s): Extend runway 18R/36L 4,600 feet; Acquire Noise Lane (101.7 acres); Acquire security Vehicle.

Class or classes of air carriers that the public agency has requested not be required to collect PFCs: Any Air Taxi/Commercial Operator (ATCO), Certified Air Carriers (CAC) and Certified Route Air Carriers (CRAC) have fewer than 500 annual emplanements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

in addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Huntsville-Madison county Airport Authority

Issued in Jackson, MS on September 19, 2002.

Wayne Atkinson,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 02–24451 Filed 9–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Government-Owned Invention for Licensing

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration hereby gives notice of the general availability of exclusive or partially exclusive licenses under the following pending patent. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404. Applications will be evaluated utilizing the following criteria: (1) Ability to further develop the invention to practical application; (2) ability to manufacture and market the developed technology; (3) time required to bring technology to market and rate of production; (4) royalties and royalty structure; and, (5) small business status. Because the invention was made at the Federal Aviation Administration's William J. Hughes Technical Center and may require additional development, the FAA may license the invention under a Cooperative Research and Development Agreement as provided for by the Federal Technology Transfer Act, as amended, 15 U.S.C. 3710a.

Patent application Serial Number 09/741,871 entitled ''Heat Release Rate Calorimeter for Milligram Samples'' was filed 22 December 2000. Corresponding foreign patent applications have been filed in select countries. The application discloses a calorimeter that measures heat release rates of very small samples (on the order of one to 10 milligrams) without the need to separately and simultaneously measure the mass loss rate of the sample and the heat of combustion of the fuel gases produced during the fuel generation process. The sample is thermally decomposed in a small volume pyrolysis chamber. The resulting fuel gases are immediately swept by an inert gas stream from the pyrolysis chamber into a combustion furnace in the order in which they are produced, essentially in a plug-like flow. This plug flow substantially synchronizes the emerging fuel gases with the mass loss rate of the sample. Oxygen is metered into the fuel gas stream just before it enters the combustion furnace where the fuel gases are completely oxidized. The effluent from the furnace is analyzed to determine the amount of oxygen consumed per unit time and the heat release rate is computed using well-known transformations without the need to separately measure the mass loss rate of the sample. Results are comparable to time and labor intensive methods requiring the use of a thermogravimetric analyzer/gas chromatograph—mass spectrometer technique.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice.

ADDRESSES: Interested parties may contact James Drew, Senior Attorney, ACT–7, Federal Aviation Administration William J. Hughes Technical Center, Atlantic City International Airport, New Jersey 08405, or by email to *james.drew@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Richard E. Lyon, AAR–422, Federal Aviation Administration William J. Hughes Technical Center, Atlantic City International Airport, New Jersey 08405, telephone (609) 485–6076, or by email to *richard.e.lyon@faa.gov.*

Dated: September 16, 2002.

James J. Drew,

Senior Attorney, Intellectual Property.

[FR Doc. 02–24453 Filed 9–25–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement Number PS–ACE100–2001–004, Guidance for Reviewing Certification Plans To Address Human Factors for Certification of Part 23 Small Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of policy.

SUMMARY: This notice announces the issuance of policy statement number PS–ACE100–2001–004, Guidance for Reviewing Certification Plans to Address Human Factors for Certification of Part 23 Small Airplanes. This policy clarifies Federal Aviation Administration certification policy on human factors.

DATES: Policy PS–ACE100–2001–004 was issued by the Manager of the Small Airplane Directorate, ACE–100, on August 29, 2002.

How to Obtain Copies: A paper copy of policy statement PS–ACE100–2001–004 may be obtained by contacting Ms. Pat Nininger by telephone at 816–329–4111 or by addressing your request to her at ACE–111, 901 Locust, Room 301, Kansas City, MO 64106 or by faxing your request to 816–329–4090. The policy will also be available on the Internet at *http://www.faa.gov/certification/aircraft/small_airplane_directorate_advisory.htm*.

Issued in Kansas City, Missouri on September 13, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–24450 Filed 9–25–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

Reports, Forms, and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Emergency **Federal Register** notice.

SUMMARY: The U.S. Department of Transportation, Transportation Security Administration, has submitted the following request for emergency-processing of a public information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 35). This notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to OMB for review and comment. The ICR describes the nature of information collections and their expected burden.

DATES: Submit comments on or before October 28, 2002.

COMMENTS: You may send comments to Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT-TSA Desk Officer

FOR FURTHER INFORMATION CONTACT: Orelious Walker, TSA, 400 7th Street, SW., Washington, DC 20590, (202) 441–7394.

SUPPLEMENTARY INFORMATION:

Transportation Security Administration

Title: Aviation Security Customer Satisfaction Intercept Survey Pilot Test.

OMB Control Number: [Not yet assigned].

Frequency: One-time study consisting of two data collections at each of three locations.

Affected Public: Passengers on commercial airlines who pass through the passenger screening checkpoint at an airport with federalized security operations.

Abstract: As part of the Transportation Security Administration's effort to become a performance-based, constituent-centric organization, it has committed to being attentive and responsive to the experiences of its customers. In support of this goal, TSA plans to conduct surveys at airports to ascertain passenger experiences though the airport security checkpoint. The data collection will consist of an intercept survey in which passengers passing through passenger screening checkpoints will be handed postcard-sized surveys and asked to complete them and return them to TSA by mail. TSA proposes to conduct a pilot test of this methodology over two, two-week periods at each of three airports in the United States.

The proposed pilot survey will be administered in November and December 2002. The survey will be administered by providing survey forms to a random sample of 10% of the passengers who pass through an airport security checkpoint during randomly selected time intervals during the data collection period. Respondents will return the completed survey forms by mail. The return address and postage will be pre-printed on the form.

Participation by respondents is voluntary. The survey is expected to average approximately 5 minutes to complete. All respondents' results will remain anonymous and completely confidential. Participant names are not collected during the interview.

Findings from the survey will be used to evaluate and improve aviation security operations at the passenger checkpoint. The pilot test is designed to serve principally as a test of the methodology for feasibility nationwide.

Estimated burden: 375 hours.

Number of respondents: 3,750.

Issued in Washington, DC on September 19, 2002.

Lana Tannozzini,

Director of Office of Strategic , Management & Analysis.

[FR Doc. 02–24446 Filed 9–25–02; 8:45 am]

BILLING CODE 4110–62–P

Federal Register

Thursday,
September 26, 2002

Part II

Department of the Treasury

31 CFR Part 103

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Casinos and Card Clubs Report Suspicious Transactions; Final Rule and Notice

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA22

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Casinos and Card Clubs Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: This document contains amendments to the regulations implementing the statute generally referred to as the Bank Secrecy Act. The amendments require casinos and card clubs to report suspicious transactions to the Department of the Treasury. Further, the amendments make certain changes to the requirement that casinos and card clubs maintain Bank Secrecy Act compliance programs. The amendments constitute a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States, as a part of the counter-money laundering program of the Department of the Treasury.

DATES: *Effective Date:* October 28, 2002.

Applicability Date: For suspicious transaction reporting, the applicability date is March 25, 2003. *See* 31 CFR 103.21(g) of the final rule contained in this document.

FOR FURTHER INFORMATION CONTACT: Leonard C. Senia and Shelley Waxman, Senior Regulatory Compliance Program Specialists, Office of Compliance and Regulatory Enforcement, FinCEN, (202) 354–6400; and Judith R. Starr, Chief Counsel, and Christine L. Schuetz, Attorney-Advisor, Office of Chief Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions.

The Bank Secrecy Act (''BSA''), Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311 *et seq.*) appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g),[2] to require financial institutions to report suspicious transactions. As amended by the USA Patriot Act, subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2)(A) provides further that

> If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—
>
> (i) The financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and
>
> (ii) No officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

Subsection (g)(3)(A) provides that neither a financial institution, nor any director, officer, employee, or agent of any financial institution

> that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, ''to the extent practicable and appropriate,'' to designate ''a single officer or agency of the United States to whom such reports shall be made.''[3] The designated agency is in turn responsible for referring any report of a suspicious transaction to ''any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.'' *Id.,* at subsection (g)(4)(B).

The provisions of 31 U.S.C. 5318(h), also added to the BSA in 1992 by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, authorize the Secretary of the Treasury ''[i]n order to guard against money laundering through financial institutions * * * [to] require financial institutions to carry out anti-money laundering programs.'' 31 U.S.C. 5318(h)(1). Those programs may include ''the development of internal policies, procedures, and controls''; ''the designation of a compliance officer''; ''an ongoing employee training program''; and ''an independent audit function to test programs.'' 31 U.S.C. 5318(h)(A–D). In 1994, Treasury adopted a regulation requiring casinos to implement anti-money laundering programs in accordance with 31 U.S.C. 5318(h).[4]

Section 352 of the USA Patriot Act amended section 5318(h) to mandate compliance programs for all financial institutions defined in 31 U.S.C. 5312(a)(2). Section 352 of the USA Patriot Act became effective April 24, 2002. On April 29, 2002, Treasury issued an interim final rule providing that certain financial institutions, including casinos, would be deemed to be in compliance with 31 U.S.C. 5318(h) if they establish and maintain anti-money laundering programs as required by existing FinCEN regulations, or their respective federal regulator or self-regulatory organization.[5] Therefore, a casino or a card club that implements

[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the ''USA Patriot Act''), Public Law 107–56.

[2] 31 U.S.C. 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act (the ''Annunzio-Wylie Anti-Money Laundering Act''), Title XV of the Housing and Community Development Act of 1992, Public Law 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994 (the ''Money Laundering Suppression Act''), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, to require designation of a single government recipient for reports of suspicious transactions.

[3] This designation does not preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency ''pursuant to any other applicable provision of law.'' 31 U.S.C. 5318(g)(4)(C).

[4] *See* 59 FR 61660 (December 1, 1994).

[5] *See* 67 FR 21110 and 31 CFR 103.120(d).

and maintains a compliance program as required by 31 CFR 103.64 will be deemed to be in compliance with the requirements of 31 U.S.C. 5318(h)(1).

II. Application of the Bank Secrecy Act to Casinos and Card Clubs

With this rule, the Department of the Treasury extends to casinos and card clubs the suspicious transaction reporting regime to which the nation's banks, thrift institutions, credit unions, broker-dealers, and certain money services businesses, including money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks, are already subject. Banks, thrift institutions, and credit unions have been subject to the suspicious transaction reporting requirement since April 1, 1996.[6] Money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks were made subject to the suspicious transaction reporting requirement on March 14, 2000.[7] On July 1, 2002, FinCEN published a final rule requiring broker-dealers to file reports of suspicious transactions beginning after December 30, 2002.[8]

State licensed gambling casinos were generally made subject to the BSA as of May 7, 1985, by regulation issued early that year. *See* 50 FR 5065 (February 6, 1985).[9] Special BSA regulations relating to casinos were issued in 1987, and amended in 1989 and (more significantly) in 1994. *See* 52 FR 11443 (April 8, 1987), 54 FR 1165 (January 12, 1989), and 59 FR 61660 (December 1, 1994) (modifying and putting into final effect the rule originally published at 58 FR 13538 (March 12, 1993)). These actions reflect the continuing determination not only that casinos are vulnerable to manipulation by money launderers and tax evaders but, more generally, that gaming establishments provide their customers with a financial product—gaming—and as a corollary offer a broad array of financial services, such as customer deposit or credit accounts, facilities for transmitting and receiving funds transfers directly from other institutions, and check cashing and currency exchange services, that are similar to those offered by depository institutions and other financial firms.

In recognition of the importance of the application of the BSA to the casino gaming industry, section 409 of the Money Laundering Suppression Act codified the application of the BSA to gaming activities by adding casinos and other gaming establishments to the list of financial institutions specified in the BSA itself. The statutory provision found at 31 U.S.C. 5312(a)(2)(X) reads:

> (2) Financial institution means—
>
> (X) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than $1,000,000 which—
>
> (i) Is licensed as a casino, gambling casino, or gaming establishment under the laws of any State or any political subdivision of any State; or
>
> (ii) Is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act).
>
> * * *

Gambling casinos authorized to do business under the Indian Gaming Regulatory Act became subject to the BSA on August 1, 1996, *see* 61 FR 7054 (February 23, 1996), and the class of gaming establishments known as ''card clubs'' became subject to the BSA on August 1, 1998.[10] *See* 63 FR 1919 (January 13, 1998).

Since May 1985, casinos located in Nevada have been exempt from certain BSA requirements pursuant to a memorandum of agreement between the Treasury Department and the State of Nevada on behalf of Nevada casinos under 31 CFR 103.45(c)(1) (subsequently renumbered as 103.55).[11] By its terms, the memorandum of agreement only exempts Nevada casinos from the BSA requirements applicable to casinos at the time it was signed, including currency transaction reporting and recordkeeping requirements. Therefore, casinos in Nevada must comply with the final rule published in this document.

III. Importance of Suspicious Transaction Reporting in Treasury's Counter-Money Laundering Program

The Congressional authorization of reporting of suspicious transactions recognizes two basic points that are central to Treasury's counter-money laundering and counter-financial crime programs. First, it is to financial institutions that money launderers must go, either initially, to conceal their illegal funds, or eventually, to recycle those funds back into the economy. Second, the employees and officers of those institutions are often more likely than government officials to have a sense as to which transactions appear to lack commercial justification (or in the case of gaming establishments, transactions that appear to lack a reasonable relationship to legitimate wagering activities) or that otherwise cannot be explained as constituting a legitimate use of the casino's financial services.

The importance of extending suspicious transaction reporting to all relevant financial institutions, including non-bank financial institutions, relates to the concentrated scrutiny to which banks have been subject with respect to money laundering. This attention, combined with the cooperation that banks have given to law enforcement agencies and banking regulators to root out money laundering, have made it far more difficult than in the past to pass large amounts of cash directly into the nation's banks unnoticed. As it has become increasingly difficult to launder large amounts of cash through banks, criminals have turned to non-bank financial institutions, including casinos, in attempts to launder funds.[12] Indeed, many non-banks have already recognized the increased pressure that money launderers have come to place upon their operations and the need for innovative programs of training and monitoring necessary to counter that pressure.

The National Money Laundering Strategy for 2002 (the ''2002

[6] The suspicious transaction reporting rule for banks is found at 31 CFR 103.18. In collaboration with FinCEN, the federal bank supervisors (the Board of Governors of the Federal Reserve System (''Federal Reserve''), the Office of the Comptroller of the Currency (''OCC''), the Federal Deposit Insurance Corporation (''FDIC''), the Office of Thrift Supervision (''OTS''), and the National Credit Union Administration (''NCUA'')) concurrently issued suspicious transaction reporting rules under their own authority. *See* 12 CFR 208.62 (Federal Reserve); 12 CFR 21.11 (OCC); 12 CFR 353.3 (FDIC); 12 CFR 563.180 (OTS); and 12 CFR 748.1 (NCUA). The bank supervisory agency rules apply to banks, non-depository institution affiliates and subsidiaries of banks and bank holding companies, and bank holding companies.

[7] The suspicious transaction reporting rule for these money services businesses is found at 31 CFR 103.20.

[8] *See* 67 FR 44048. This rule can be found at 31 CFR 103.19.

[9] Casinos whose gross annual gaming revenue do not exceed $1 million were, and continue to be, excluded from Bank Secrecy Act coverage.

[10] Generally card clubs are subject to the same rules as casinos, unless a specific provision of the rules are 31 CFR part 103 applicable to casinos explicitly requires a different treatment for card clubs. As in the case of casinos, card clubs whose gross annual gaming revenue is $1 million or less are excluded from BSA coverage. *See* 31 CFR 103.11(n)(8).

[11] 31 CFR 103.55(c)(1) provides that the Secretary of the Treasury may grant exemptions to casinos in any state ''whose regulatory system substantially meets the reporting and recordkeeping requirements of this part.''

[12] *See., e.g., United States* v. *Vanhorn,* 2002 U.S. App. LEXIS 14277 (8th Cir. July 16, 2002) (defendant converted illegally-derived money into cash at casino, then deposited it as gambling proceeds into investment account); *United States* v. *Bockius,* 228 F.3d 305 (3rd Cir. 2000) (defendant laundered money by wiring funds to casino, losing some of the money gambling, and taking the remainder of the cash); *United States* v. *Napoli,* 179 F.3d (2nd Cir. 1999) (sentencing of defendant convicted of money laundering by depositing funds derived from scheme to defraud cigarette importers into casino account, gambling a portion, then cashing the remainder out).

Strategy'') [13] reaffirms Treasury's commitment, expressed in prior National Money Laundering Strategy reports, to extending to casinos the requirement to report suspicious transactions.[14] As explained in the National Money Laundering Strategy for 1999:

> The attention given to the prevention of money laundering through banks reflects the central role of banking institutions in the global payments system and the global economy. But non-bank financial institutions require attention as well. Money launderers will move their operations to institutions in which their chances of successful evasion of enforcement and regulatory efforts is the highest.[15]

The reporting of suspicious transactions is also recognized as essential to an effective counter-money laundering program in the international consensus on the prevention and detection of money laundering. One of the central recommendations of the Financial Action Task Force Against Money Laundering (''FATF'') is that:

> If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.

Financial Action Task Force Annual Report (June 28, 1996),[16] Annex 1 (Recommendation 15). The recommendation applies equally to banks and non-banks.[17]

Similarly, the European Community's *Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering* calls for member states to

> ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering * * * by [in part] informing those authorities, on their own initiative, of any fact which might be an indication of money laundering.

EC Directive, O.J. Eur. Comm. (No. L 166) 77 (1991), Article 6. *Accord, the Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses of the Organization of American States*, OEA/Ser. P. AG/Doc. 2916/92 rev. 1 (May 23, 1992), Article 13, section 2.[18] All of these documents also recognize the importance of extending the counter-money laundering controls to ''non-traditional'' financial institutions, not simply to banks, both to ensure fair competition in the marketplace and to recognize that non-bank providers of financial services as well as depository institutions, are an attractive mechanism for, and are threatened by, money launderers. *See, e.g., Financial Action Task Force Annual Report, supra*, Annex 1 (Recommendation 8).

IV. Notice of Proposed Rulemaking

The final rule contained in this document is based on the notice of proposed rulemaking published May 18, 1998 (the ''Notice'') (63 FR 27230), and the Request for Additional Comments on the nature of the proposed reporting standard published March 29, 2002 (the ''Additional Request for Comments'') (67 FR 15138). The Notice proposed to require casinos [19] to report suspicious transactions to the Department of the Treasury. The notice also proposed related changes to the provisions of 31 CFR 103.54 (subsequently renumbered as 103.64) relating to casino compliance programs.

Subsequent to issuing the Notice, FinCEN held four public meetings to provide interested parties with the opportunity to present their views with respect to the potential effects of the Notice, as well as to provide FinCEN with additional information and feedback useful in preparing the final rule based on the Notice.[20] FinCEN then made transcripts of these meetings available to requesting parties.

The comment period for the Notice ended on September 15, 1998. FinCEN received a total of eighteen comment letters. Of these, 5 were submitted by casinos, 4 by casino trade associations, 4 by agencies representing state or tribal governments, 2 by casino consulting services, 1 by several members of the New Jersey Congressional delegation, 1 by an agency of the United States Government, and 1 by a law firm. The comment period for the Request for Additional Comments ended on May 28, 2002. FinCEN received a total of fourteen letters. Of these, 4 were submitted by casino trade associations, 3 by agencies representing state or tribal governments, 2 by casinos, 3 by members of the United States Congress, 1 by a card club, and 1 by a law firm representing several tribal governments.

V. Summary of Comments and Revisions

A. Introduction

The format of the final rule is generally consistent with the format of the rule proposed in the Notice. The terms of the final rule, however, differ from the terms of the Notice in the following significant respects:

- The dollar threshold for reporting suspicious transactions has been raised from $3,000 to $5,000;
- A fourth category of reportable activity has been added to the rule, to clarify that all violations of law, other than those specifically exempted by the rule, are within the scope of required reporting;
- An exception from reporting relating to robbery or burglary has been added to the rule;
- The language requiring casinos annually to conduct independent testing of their compliance programs has been revised to permit casinos to determine the scope and frequency of such review based on an evaluation by the casino of money laundering risks posed by the casino's operations;
- The language requiring casinos annually to prepare a statement relating to the effectiveness of the casino's internal controls and procedures has been deleted; and
- The language requiring casinos to incorporate into their compliance

[13] The 2002 Strategy, published in August 2002, was the fourth in a series of five annual reports called for by the Money Laundering and Financial Crimes Strategy Act of 1998; Public Law 105–310 (October 30, 1998), codified at 31 U.S.C. 5340 *et seq*. Each annual report is to be submitted to Congress by the President, working through the Secretary of the Treasury in consultation with the Attorney General.

[14] 2002 Strategy, at page 44 (''FinCEN anticipates issuing a final rule [requiring casinos to report suspicious transactions] by December 2002'').

[15] 1999 Money Laundering Strategy, at 35–36.

[16] FATF is an inter-governmental body whose purpose is development and promotion of policies to combat money laundering. Originally created by the G–7 nations, its membership now includes Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council.

[17] This recommendation revises the original recommendation, issued in 1990, that required institutions to be either ''*permitted or* required'' to report. (Emphasis supplied.) The revised recommendation reflects the international consensus that a mandatory suspicious transaction reporting system is essential to an effective national counter-money laundering program and to the success of efforts of financial institutions themselves to prevent and detect the use of their services of facilities by money launderers and others engaged in financial crime.

[18] The Organization of American States (''OAS'') reporting requirement is linked to the provision of the Model Regulations that institutions ''shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose.'' OAS Model Regulation, Article 13, section 1.

[19] As used hereafter in this document, the phrase ''casino'' when used singly includes a reference both to casinos and to card clubs, as the latter term is defined in 31 CFR 103.11(n)(6), unless the context clearly indicates otherwise. *See* 31 CFR 103.11(n)(5)(iii). 31 CFR 103.11(n)(5)(iii) and (n)(6) were added to the BSA regulations by final rule published at 63 FR 1919 (January 13, 1998).

[20] These public meetings were held in New Orleans, Louisiana, on July 14, 1998; Chicago, Illinois, on July 23, 1998; Scottsdale, Arizona, on August 6, 1998; and New York City, New York, on September 9, 1998.

programs procedures for using all available information to determine the occurrence of suspicious transactions has been revised.

B. Comments on the Notice—Overview and General Issues

Comments on the Notice concentrated on three matters: (i) The proposed $3,000 threshold for reporting suspicious transactions; (ii) the proposed reporting standard requiring casinos to report suspicious transactions when they have ''reason to suspect'' that a transaction requires reporting under the terms of the rule; and (iii) the meaning of the term ''suspicious'' in the context of gaming.

1. Dollar Threshold for Reporting

FinCEN received several comments concerning the establishment of the proper dollar threshold for reporting suspicious transactions. The majority of commenters on this subject argued that the proposed $3,000 threshold was too low and urged that it be raised to at least $5,000, the suspicious transaction reporting threshold applicable to banks. In response to these comments, the final rule increases the dollar threshold for reporting suspicious transactions to $5,000. Adoption of this reporting threshold is intended to reduce the burden of reporting while at the same time ensuring collection of reports of suspicious transactions that are significant for law enforcement purposes.

FinCEN wishes to emphasize that the rule is not intended to require casinos mechanically to review every transaction that exceeds the reporting threshold. Rather, it is intended that casinos, like every type of financial institution to which the suspicious transaction reporting rules of 31 CFR part 103 apply, will evaluate customer activity and relationships for money laundering risks, and design a suspicious transaction monitoring program that is appropriate for the particular casino in light of such risks. In other words, it is expected that casinos will follow a risk-based approach in monitoring for suspicious transactions, and will report all detected suspicious transactions that involve $5,000 or more in funds or other assets. A well-implemented anti-money laundering compliance program should reinforce a casino's efforts in detecting suspicious activity. In addition, casinos are encouraged to report on a voluntary basis detected suspicious transactions that fall below the $5,000 reporting threshold, such as the submission by a customer of an identification document that the casino suspects is false or altered, in the course of a transaction that triggers an identification requirement under the Bank Secrecy Act or other law.

2. Standard for Reporting

Paragraph (a)(2) requires reporting if a casino ''knows, suspects, or has reason to suspect'' that a transaction requires reporting under the rule.[21] Commenters on the Notice and on the Request for Additional Comments raised several objections to inclusion in the rule of an objective reporting standard. First, commenters argued that the ''fast-paced, entertainment-filled environment'' at casinos makes implementation of an objective reporting standard overly burdensome. Commenters asserted that, although the objective reporting standard may be appropriate in the context of the environment found at banks, casinos would find it difficult to discern whether a transaction is unusual for a particular customer or lacks a legitimate business purpose. Commenters also argued that, under an objective reporting standard, casinos would likely find it necessary to document their reasons for not filing a suspicious activity report with respect to a particular transaction that meets the reporting threshold, or even to report all transactions that exceed the reporting threshold, whether or not suspicious. Some commenters suggested adding language to the rule specifically discussing a casino's obligation to exercise due diligence in the detection and reporting of suspicious activities. One commenter argued however, that even adding specific due diligence language to the text of the rule would not protect casinos from after the fact second-guessing by examiners.

FinCEN has determined that the ''has reason to suspect'' language, which is contained in all of the existing BSA suspicious transaction reporting rules, including those for depository institutions, broker-dealers, and certain money services businesses, should be retained because it is necessary to the imposition of a due diligence requirement on reporting entities. This does not mean, however, that casinos will be subjected to unfair second-guessing of their efforts in detecting and reporting suspicious activity. Rather, the standard incorporates well-recognized and objective due diligence concepts. As FinCEN explained in the Additional Request for Comments, the ''reason to suspect'' standard means that, on the facts existing at the time, a reasonable casino in similar circumstances would have suspected the transaction was subject to suspicious transaction reporting. This is a flexible standard that recognizes the variation in operating realities within a casino (for example, the differences between a casino cage and the gaming floor), among various types of casinos, and among various types of financial institutions generally. This reporting standard is complementary to language found in the requirement that casinos implement BSA compliance programs. Under 31 CFR 103.64, casinos are required to develop and implement a program ''*reasonably* designed to assure and monitor compliance'' with the requirements of the BSA, including the requirement to report suspicious transactions under the final rule. (Emphasis supplied.) For all of these reasons, FinCEN believes that it is appropriate to require all financial institutions to which suspicious activity reporting rules under the BSA have been extended to meet the ''has reason to suspect'' standard.

3. Meaning of ''Suspicious'' in the Context of Gaming Activity

Several commenters argued that the term ''suspicious'' is vague, and suggested that further definition of the term is necessary in order to help casinos identify those transactions that should be reported under the rule, and to avoid liability for failure to file a report in situations in which it is unclear whether a report is warranted. Commenters expressed concern that, if a specific definition for the term ''suspicious'' is not added to the rule, casinos will risk penalties in situations in which casinos and examiners disagree about what type of activity should be deemed suspicious.

FinCEN believes that to craft a more specific definition of the term ''suspicious'' would result in a rigid, automatic approach to suspicious transaction reporting. As noted above, a critical aspect of suspicious transaction reporting is that it enables law enforcement to benefit from the expertise of financial institution employees and officers in judging which transactions are suspicious in the context of the particular financial services offered by the financial institution. Each casino must be able to recognize the sorts of transactions that may require additional scrutiny and at the same time understand that not all such transactions are reportable if a reasonable explanation for the circumstances of a particular transaction arises upon such examination. It is a

[21] Because the standard requires reporting when a financial institution has ''reason to suspect'' that a transaction is suspicious, the standard is referred to in the comments and in this document as an ''objective reporting standard.''

common characteristic of money launderers that they seek to do for illegitimate purposes what others do for legitimate purposes. Thus, the rule does not contain a specific definition of ''suspicious'' or a list of potentially suspicious transactions. However, FinCEN intends, when appropriate, to provide guidance to assist the casino industry in identifying transactions that may be indicative of illegal activity. For example, in August 2000, FinCEN published a guidance document (a ''SAR Bulletin'') based on a review of suspicious activity reports filed by casinos, indicating the use of wire transfers and cashier's checks to deposit funds into casino accounts, used for little or no gaming activity, and then cashed out. Such guidance materials will be made available on FinCEN's Web site, *www.treas.gov/fincen.*

Several commenters criticized the guidance document that FinCEN published in July 1998 entitled ''Suspicious Activity Reporting and Casinos,'' which provided examples of potentially suspicious casino transactions and was intended to be illustrative only. Addressing that guidance document is beyond the scope of this rulemaking. However, FinCEN intends to provide revised and updated guidance with input from law enforcement, regulators, and the casino industry to ensure that the guidance provided is timely, relevant, and useful.

VI. Section-by-Section Analysis

A. 103.11(ii)—Transaction

The final rule amends the definition of ''transaction'' in the BSA regulations, 31 CFR 103.11(ii), explicitly to include the purchase or redemption of casino chips or tokens, or other gaming instruments. This change is designed to clarify that the definition applies to transactions relating to gaming activity.

B. 103.21(a)—General

Paragraph 103.21(a)(1) generally sets forth the requirement that casinos report suspicious transactions to the Department of the Treasury. The paragraph also permits, but does not require, a casino voluntarily to file a suspicious transaction report in situations in which mandatory reporting is not required. The rule itself does not contain a separate reference to card clubs, given that, as noted above, 31 CFR 103.11(n)(5)(iii) generally provides that ''[a]ny reference in [31 CFR part 103] * * * to a casino shall also include a reference to a card club, unless the provision in question contains specific language varying its application to card clubs or excluding card clubs from its application.'' The final rule only applies to entities that fall within the definitions of ''casino'' [22] and ''card club'' [23] found in 31 CFR part 103. It should be noted that each definition contains a gross annual gaming revenue threshold of $1,000,000.

Paragraph (a)(2) provides that a transaction requires reporting under the rule if it is conducted or attempted by, at, or through a casino, involves or aggregates at least $5,000 in funds or other assets, and the casino knows, suspects, or has reason to suspect that the transaction falls within one of four categories of transactions. Thus, transactions require reporting under the final rule whether or not they involve currency. This is the approach that FinCEN has taken with respect to all BSA suspicious transaction reporting rules.

1. *Dollar Threshold for Reporting.* The final rule requires reporting of suspicious transactions that involve or aggregate at least $5,000. Several commenters suggested eliminating the requirement to file a suspicious transaction report on related suspicious transactions that, when aggregated, total at least $5,000. Commenters argued that to require casinos to aggregate transactions would be overly burdensome. However, the intent of the rule is to capture both individual suspicious transactions that meet the reporting threshold, as well as multiple transactions detected by a casino that are related (either because they were conducted by the same person, or because they were conducted by individuals working together) that, when combined, reach the $5,000 reporting threshold. To enable criminals to evade reporting simply by breaking up suspicious transactions would significantly weaken the rule's effect. A casino's compliance system should be designed to capture suspicious activity in the aggregate.

2. *Reporting Standard.* Paragraph (a)(2) requires reporting if a casino ''knows, suspects, or has reason to suspect'' that a transaction requires reporting under the rule. As explained above, this reporting standard incorporates a concept of due diligence into the reporting requirement.

3. *Scope of Reporting.* Paragraph (a)(2) contains four categories of reportable transactions. The first three reporting categories are identical to those contained in the Notice. The first category, described in paragraph (a)(2)(i), includes transactions involving funds derived from illegal activity or intended or conducted to hide or disguise funds or assets derived from illegal activity. The second category, described in paragraph (a)(2)(ii), involves transactions designed, whether through structuring or other means, to evade the requirements of the BSA. The third category, described in paragraph (a)(2)(iii), involves transactions that appear to serve no business or apparent lawful purpose or are not the sort of transactions in which the particular customer would be expected to engage, and for which the casino knows of no reasonable explanation after examining the available facts. A number of commenters opposed the reporting of transactions that could not definitively be linked to wrongdoing. Commenters argued that customers in a casino cannot be relied upon to act in ways consistent with any particular norm of financial transaction, but may be motivated by, for example, gambling superstitions. However, FinCEN believes that a suspicious transaction reporting rule must include a requirement for the reporting of transactions that vary so substantially from normal practice that they legitimately can and should raise suspicions of possible illegality in the mind of a reasonable casino employee. Unlike many criminal acts, money laundering involves the taking of apparently lawful steps for an unlawful purpose. A skillful money launderer will often split the movement of funds between several institutions so that no one institution can have a complete picture of the transactions or funds movement involved. Thus, the reporting of transactions that are unusual for a gaming customer generally, or for a particular customer, is an important element of suspicious transaction reporting.

Commenters also urged FinCEN to remove the language in the rule requiring casinos to report transactions that have ''no *business* or apparent lawful purpose'' (emphasis added). Commenters argued that many casino patrons do not have a business purpose for the transactions they conduct at casinos; rather, casino customers conduct transactions for entertainment/gaming purposes and for this reason, such language is inappropriate for a suspicious transaction reporting rule applicable to casinos. This suggestion has not been adopted. Casinos do conduct many types of transactions that resemble those conducted at traditional financial institutions. For example, a customer at a casino cage can initiate or receive funds transfers, open and settle deposit and credit accounts, and

[22] *See* 31 CFR 103.11(n)(5)(i)

[23] *See* 31 CFR 103.11(n)(6)(i)

purchase and cash checks. Moreover, the simple fact that a customer is not motivated by a business purpose in conducting a transaction that is otherwise not suspicious would not trigger the requirement to report under the rule.

The final rule contains a fourth reporting category, described in paragraph (a)(2)(iv), involving the use of the casino to facilitate criminal activity.[24] The addition of a fourth category of reportable transactions to the rule is intended to ensure that transactions involving legally-derived funds that the casino suspects are being used for a criminal purpose, such as terrorist financing, are reported under the rule. The addition of this reporting category is not intended to effect a substantive change in the rule. Such transactions should be reported under the broad language contained in the third reporting category, requiring the reporting of transactions with ''no business or apparent lawful purpose.'' FinCEN believes that this broad language should be interpreted to require the reporting of transactions that appear linked to any form of criminal activity. Nevertheless, the fourth category has been added to make explicit that transactions being carried out for the purpose of conducting illegal activities, whether or not funded from illegal activities, must be reported under the rule. It should be noted that, in determining whether transactions are required to be reported under the third or fourth reporting categories of the rule, casinos are not expected to have expert knowledge of what constitutes a violation of each state or federal criminal law. Rather, it is intended that casinos will report transactions that appear, for whatever reason, to be conducted for an unlawful purpose.

Several commenters indicated that the rule seems to require casinos to deem each transaction as suspicious until proven otherwise, and to retain documentation describing why the casino has determined that each transaction exceeding the reporting threshold for which a suspicious transaction report has not been filed is not suspicious. However, the rule does not require this level of review and documentation. Rather, as explained above, casinos are expected to evaluate customer activity in light of the casino's relationship with the customer, and knowledge of customer activity in general. This is emphasized by the compliance program requirement for casinos found at 31 CFR 103.64, which requires casinos to develop and implement a written program ''*reasonably* designed to assure and monitor compliance with'' the BSA and its implementing regulations. (Emphasis added.)

C. 103.21(b)—Filing Procedures

Paragraph (b) continues to set forth the filing procedures to be followed by casinos making reports of suspicious transactions. Within 30 days after a casino becomes aware of a suspicious transaction, the casino must report the transaction by completing a Form TD F 90–22.49, Suspicious Activity Reporting by Casinos (''SARC'') and filing it in a central location, to be determined by FinCEN. Special provision is made for situations requiring immediate attention (*e.g.*, where delay in reporting might hinder law enforcement's ability to fully investigate the activity), in which case casinos are immediately to notify, by telephone, the appropriate law enforcement authority in addition to filing a SARC. In addition, casinos may wish to contact FinCEN's Financial Institutions Hotline (1–866–556–3974), for use by financial institutions wishing voluntarily to report to law enforcement suspicious transactions that may relate to terrorist activity. Casinos reporting suspicious activity by calling the Financial Institutions Hotline must still file a timely SARC to the extent required by the final rule. Published for comment elsewhere in this issue of the **Federal Register** is a revised SARC designed for use by the casino industry as a whole, and incorporating the terms of the final rule.

If a casino is unable to identify a suspect on the date the suspicious transaction is initially detected, the rule provides the casino with an additional 30 calendar days to identify the suspect before filing a SARC, but the suspicious transaction must be reported within 60 calendar days after the date of initial detection of the suspicious transaction, whether or not the casino is able to identify a suspect. Commenters requested clarification on the extent to which a casino must attempt to obtain customer identification for purposes of completing a SARC. Commenters argued that casinos often deal with customers with whom they are not familiar. The final rule does not require a casino to alter its relationship with its customers in a way that is inconsistent with industry practice. As a result, FinCEN anticipates receiving a certain number of SARCs that do not contain detailed customer identifying information. However, casinos must ensure that their BSA compliance programs include procedures for using all available information to determine and verify a customer's identification for purposes of satisfying a casino's reporting and recordkeeping requirements under the BSA.[25]

D. 103.21(c)—Exceptions

In response to comments, paragraph (c) provides that a casino is not required to report under the final rule a robbery or burglary that the casino reports to an appropriate law enforcement authority.

E.103.21(d)—Retention of Records

Paragraph (d) continues to provide that casinos must maintain copies of the SARCs they file and the original related documentation (or business record equivalent) for a period of five years from the date of filing. Supporting documentation is to be made available to FinCEN, and any other appropriate law enforcement agencies, or federal, state, local, or tribal gaming regulators, upon request.

F.103.21(e)—Confidentiality of Reports; Limitation of Liability

Paragraph (e) continues to incorporate the terms of 31 U.S.C. 5318(g)(2) and (g)(3). Thus, this paragraph specifically prohibits persons filing reports in compliance with the final rule (or voluntary reports of suspicious transactions) from disclosing, except to appropriate law enforcement and regulatory agencies, that a report has been prepared or filed. The paragraph also restates the broad protection from liability for making reports of suspicious transactions (whether such reports are required by the final rule or made voluntarily), and for failure to disclose the fact of such reporting, contained in the statute as amended by the USA Patriot Act. The regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection; however, because FinCEN recognizes the importance of these statutory provisions in the overall effort to encourage meaningful reports of suspicious transactions and to protect the legitimate privacy expectations of those who may be named in such reports, they are repeated in the rule to remind compliance officers and others of their existence.

[24] Although the fourth reporting category does not appear in FinCEN's suspicious activity reporting rules for banks and money services businesses, identical language appears in FinCEN's suspicious activity reporting rule for broker-dealers found at 31 CFR 103.19, while similar language appears in the banking regulatory agencies' suspicous transaction reporting rules for depository institutions promlugated under Title 12.

[25] *See* 31 CFR 103.64(a)(2)(v)(A).

G. Compliance

Paragraph (f) continues to note that compliance with the obligation to report suspicious transactions will be audited, and provides that failure to comply with the rule may constitute a violation of the BSA and the BSA regulations, which may subject non-complying casinos to an enforcement action under the BSA.

H. 103.21(g)—Effective Date

Paragraph (g) provides a 180-day period before which compliance with the suspicious transaction reporting rule will become mandatory.

I. 103.64—Related Changes to Casino Compliance Program Requirements

General. As noted above, the suspicious transaction reporting rule is complemented by the compliance program requirement for casinos found at 31 CFR 103.64. (This requirement previously appeared at 31 CFR 103.54.) Prior to enactment of section 352 of the USA Patriot Act requiring all financial institutions to develop and implement anti-money laundering compliance programs, only casinos had been subject to a compliance program requirement under Title 31 of the United States Code. However, in response to the mandate of the USA Patriot Act, FinCEN has begun promulgating compliance program requirements for additional financial institutions, including money services businesses, mutual funds, and operators of credit card systems.[26] Thus, FinCEN has determined to revise the proposed changes to the casino compliance program requirement contained in the Notice in a manner consistent with the compliance program requirements promulgated under the USA Patriot Act.

a. *Testing for compliance.* 31 CFR 103.64(a)(2)(ii) requires that casino compliance programs include ''[i]nternal and/or external independent testing for compliance.'' The Notice proposed modifying the requirement so that the necessary testing (i) would be required to occur at least annually, and (ii) would include a specific determination whether programs at the casino are working effectively to ensure that suspicious transactions, and currency transactions of more than $10,000, are detected and reported, and the casino is able properly to comply with recordkeeping and compliance program standards. However, 31 U.S.C. 5318(h) as amended by section 352 of the USA Patriot Act does not specify the frequency with which the required independent testing must be conducted, and in promulgating compliance program requirements pursuant to the USA Patriot Act, FinCEN has not required annual testing. Rather, the recently published anti-money laundering compliance program requirements for money services businesses and operators of credit card systems provide that the scope and frequency of testing must be commensurate with the risks posed by the products and services offered by the financial institutions to which they apply, and the manner in which such products and services are offered. FinCEN has determined that casinos too should be permitted to conduct their own risk-based analyses to determine the scope and frequency with which the independent testing required under the rule must take place. Therefore, the final rule provides that the scope and frequency of review of a casino's compliance program ''shall be commensurate with the money laundering and terrorist financing risks posed by the products and services provided by the casino.''

b. *Occurrence or patterns of suspicious transactions.* 31 CFR 103.64(a)(2)(v)(B) requires casinos to maintain procedures to determine ''[w]hen required by [31 CFR part 103] the occurrence of unusual or suspicious transactions.'' The Notice proposed revising the rule to make clear that the necessary procedures extend to analysis not only of customer accounts but also of the casino's own records derived from or used to record, track, or monitor casino activity. However, some commenters expressed concern that the proposed language would require a casino to screen retrospectively all transactions in order to monitor for suspicious activity. Given that the rule already requires casinos to implement ''procedures for using all available information'' to determine customer identification, the occurrence of suspicious transactions, and whether a record must be made and retained, and that casinos that have automated data processing systems must use them to aid in assuring compliance, the final rule does not adopt the language contained in the Notice. Instead, the provision has been revised to reflect implementation of the final rule requiring casinos to report suspicious transactions.

VII. Executive Order 12866

The Department of the Treasury has determined that this rulemaking is not a significant regulatory action under Executive Order 12866.

VIII. Regulatory Flexibility Act

FinCEN certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The BSA authorizes Treasury to require financial institutions to report suspicious activities. 31 U.S.C. 5313(g). However, the BSA excludes casinos or gaming establishments with annual gaming revenue not exceeding $1 million from the definition of ''financial institution.'' 31 U.S.C. 5312(a)(2)(X). Thus, certain small casinos and card clubs are excluded by statute from the operation of the final rule. Other casinos, namely those in Colorado and South Dakota, are subject to state law limitations on the size of wagers that may be made at those casinos. In casinos such as these, the burden to establish procedures to detect suspicious activity should be substantially reduced since the low dollar amount of the limits makes it unlikely that customers would engage in transactions at these casinos large enough to trigger a reporting requirement under the final rule.

As to the remaining casinos and card clubs, many of the requirements of the final regulation may be satisfied, in large part, using existing business practices and records. For example, many casinos already obtain a great deal of data about their customers from information routinely collected from casino established deposit, credit, check cashing, and player rating accounts. This existing data can assist casinos in making decisions about whether a transaction is suspicious. Many casinos also already have policies and procedures in place and have trained personnel to detect unusual or suspicious transactions, as part of their own risk prevention programs. In addition, it is common in the casino industry to perform annual, and in some cases quarterly, testing of compliance programs. Further, a number of casinos have already begun voluntarily reporting suspicious transactions to Treasury.

In drafting the rule, FinCEN carefully considered the importance of suspicious transaction reporting to the administration of the BSA. Congress considers suspicious transaction reporting a ''key ingredient in the anti-money laundering effort.''[27] Moreover, the legislative history of the BSA demonstrates that money launderers will shift their activities away from more regulated to less regulated

[26] *See* 67 FR 21114, 21117, and 21121 (April 29, 2002).

[27] H.R. Rep. No. 438, 103d Cong., 2d Sess. 15 (1994).

financial institutions.[28] Finally, there is no alternative mechanism for the government to obtain this information other than by requiring casinos and card clubs to set up procedures to detect and report suspicious activity.

IX. Paperwork Reduction Act Notice

The collection of information contained in this final regulation has been approved by the Office of Management and Budget (''OMB'') in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1506–0006. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this final rule is in 31 CFR 103.21(b)(3) and (d). This information is required to be provided pursuant to 31 U.S.C. 5318(g) and 31 CFR 103.21. This information will be used by law enforcement agencies in the enforcement of criminal and regulatory laws. The collection of information is mandatory. The likely recordkeepers are businesses.

The estimated average recordkeeping burden associated with the collection of information in this final rule is four hours per recordkeeper. The estimated average recordkeeping burden contained in the Notice was three hours. FinCEN received some comments during the comment period requesting that the burden estimate should better reflect the amount of time involved in analyzing whether transactions require reporting under the rule. Although, to a certain extent, such comments were based on a misunderstanding of the requirements of the rule that FinCEN subsequently clarified through publication of Request for Additional Comments, the burden estimate has been revised to address commenters' concerns. The burden estimate relates to the recordkeeping requirement contained in the final rule. The reporting burden of 31 CFR 103.21 will be reflected in the burden of the SARC form. FinCEN anticipates that the final rule will result in an annual filing of a total of 3000 SARCs. This result is an estimate, based on a projection of the size and volume of the industry.

Comments concerning the accuracy of this burden estimate should be directed to the Financial Crimes Enforcement Network, Department of the Treasury, Post Office Box 39, Vienna, VA 22183, and to the Office of Management and Budget, Attn: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

[28] ''It is indisputable that as banks have been more active in prevention and detection on money laundering, money launderers have turned in droves to the financial services offered by a variety of [non-bank financial institutions].'' *Id.,* at 19.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks, Banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR Part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5332; title III, secs. 314, 352, Pub. L. 107–56, 115 Stat. 307.

2. Amend § 103.11 as follows:

a. The first sentence of paragraph (n)(5)(ii) is amended by removing ''(i)(7)'' adding ''(n)(5)'' in its place.

b. In paragraph (n)(5)(iii), the references ''(n)(7)'' and ''(n)(8)'' are revised to read ''(n)(5)'' and ''(n)(6)'' respectively.

c. The third sentence of paragraph (n)(6)(i) is amended by removing ''(n)(7)(iii)'' and adding ''(n)(5)(iii)'' in its place.

d. The first sentence of paragraph (n)(6)(ii) is amended by removing ''(n)(8)'' and adding ''(n)(6)'' in its place.

e. Paragraph (ii)(1) is revised to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(ii) *Transaction.* (1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or security, purchase or redemption of any money order, payment or order for any money remittance or transfer, purchase or redemption of casino chips or tokens, or other gaming instruments, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

* * * * *

3. In subpart B, add new § 103.21 to read as follows:

§ 103.21 Reports by casinos of suspicious transactions.

(a) *General.* (1) Every casino shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A casino may also file with FinCEN, by using the form specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a casino, and involves or aggregates at least $5,000 in funds or other assets, and the casino knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the casino to facilitate criminal activity.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Casinos (''SARC''), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SARC shall be filed with FinCEN in a central location, to be determined by FinCEN, as

indicated in the instructions to the SARC.

(3) *When to file.* A SARC shall be filed no later than 30 calendar days after the date of the initial detection by the casino of facts that may constitute a basis for filing a SARC under this section. If no suspect is identified on the date of such initial detection, a casino may delay filing a SARC for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the casino shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SARC. Casinos wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SARC if required by this section.

(c) *Exceptions.* A casino is not required to file a SARC for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(d) *Retention of records.* A casino shall maintain a copy of any SARC filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SARC. Supporting documentation shall be identified as such and maintained by the casino, and shall be deemed to have been filed with the SARC. A casino shall make all supporting documentation available to FinCEN, any other appropriate law enforcement agencies or federal, state, local, or tribal gaming regulators upon request.

(e) *Confidentiality of reports; limitation of liability.* No casino, and no director, officer, employee, or agent of any casino, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SARC or the information contained in a SARC, except where such disclosure is requested by FinCEN or another appropriate law enforcement or regulatory agency, shall decline to produce the SARC or to provide any information that would disclose that a SARC has been prepared or filed, citing this paragraph (e) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A casino, and any director, officer, employee, or agent of such casino, that makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegees, under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(g) *Effective date.* This section applies to transactions occurring after March 25, 2003.

4. Section 103.64 is amended by:

a. Revising paragraph (a)(2)(ii)

b. Removing the word ''hereafter'' in paragraph (a)(2)(iii); and

c. Revising paragraph (a)(2)(v)(B).

The revised paragraphs read as follows:

§ 103.64 Special rules for casinos.

(a) Compliance programs. * * *

(2) * * *

(ii) Internal and/or external independent testing for compliance. The scope and frequency of the testing shall be commensurate with the money laundering and terrorist financing risks posed by the products and services provided by the casino;

* * * * *

(v) * * *

(B) The occurrence of any transactions or patterns of transactions required to be reported pursuant to § 103.21;

* * * * *

Dated: September 16, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–24147 Filed 9–25–02; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Suspicious Activity Report by Casinos (SARC)

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a proposed information collection contained in a revised form, ''Suspicious Activity Report by Casinos.'' The form will be used by casinos and card clubs to report suspicious activity to the Department of the Treasury. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before November 25, 2002.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, PO Box 39, Vienna, Virginia 22183, Attention: PRA Comments—SAR–Casinos Form. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov*, again with a caption, in the body of the text, ''Attention: PRA Comments—SAR–Casinos Form.''

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400.

FOR FURTHER INFORMATION CONTACT: Leonard Senia, Senior Regulatory Program Specialist, FinCEN, or Russell Stephenson, Regulatory program analyst, FinCEN, at (202) 354–6015; Judith R. Starr, Chief Counsel and Christine L. Schuetz, Attorney-Advisor, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

Title: Suspicious Activity Report by Casinos.

OMB Number: 1506–0006.

Form Number: TD F 90–22.49.

Abstract: The statute generally referred to as the ''Bank Secrecy Act,'' Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g), to require financial institutions to report suspicious transactions. Published elsewhere in this issue of the **Federal Register**, is a final rule requiring casinos and card clubs to report suspicious transactions to FinCEN.

The information collected on this revised form is required to be provided pursuant to 31 U.S.C. 5318(g) and 31 CFR 103.21. This information will be made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel for use in official performance of their duties, for regulatory purposes and in investigations and proceedings involving domestic and international money laundering, tax violations, fraud, and other financial crimes.

Reports filed by casinos required to report suspicious transactions under 31 CFR 103.21, and any reports filed voluntarily by casinos will be subject to the protection from liability contained in 31 U.S.C. 5318(g)(3) and the provision contained in 31 U.S.C. 5318(g)(2) which prohibits notification of any person involved in the transaction that a suspicious activity report has been filed.

The draft revised SAR by Casinos is presented only for purposes of soliciting public comment on the form. This form should not be used at this time to report suspicious activity. A final version of the form will be made available at a later date.

Type of Review: Revised form for information collection.

Affected public: Business or other for-profit institutions.

Frequency: As required.

Estimated Burden: Reporting average of 45 minutes per response. This burden relates to the completion of the SARC form. The recordkeeping burden of 31 CFR 103.21 is reflected in the final rule requiring casinos and card clubs to file reports of suspicious activity.

Estimated number of respondents = 550.

Estimated Total Annual Responses = 3,000.

Estimated Total Annual Burden Hours: 2,250 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: September 11, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Attachment: Suspicious Activity Report by Casinos

BILLING CODE 4810–02–P

[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the ''USA Patriot Act''), Public Law 107–56.

TD F 90-22.49
Treasury Form
Draft 08/14/02

Suspicious Activity Report by Casinos and Card Clubs

Please type or print. Always complete entire report. Items marked with an asterisk * are considered critical (see instructions).

OMB No. 1506 - 0006

1 Check the box if this report corrects a prior report (see instructions on page 6) ☐

Part I Subject Information

2 Check box (a) ☐ if more than one subject box (b) ☐ subject information unavailable

*3 Individual's last name or entity's full name | *4 First name | *5 Middle initial

6 also known as (AKA- individual), doing business as (DBA- entity) | 7 Occupation/Type of business

*8 Address | *9 City

*10 State | *11 ZIP code | *12 Country (if not U.S.) | 13 Vehicle license # / State (Optional) a. number b. state

*14 SSN / ITIN (individual) or EIN (entity) | *15 Account number No account affected ☐ Account open? Yes ☐ No ☐ | 16 Date of birth ___/___/___ MM DD YYYY

*17 Government issued identification (if available)
a ☐ Driver's license/state ID b ☐ Passport c ☐ Alien registration
d ☐ Other _____
e Number: f Issuing state or country_____

18 Phone number - work ( ) | 19 Phone number - home ( ) | 20 E-mail address (if available)

21 Affiliation or relationship to casino/Card Club
a ☐ Customer b ☐ Agent c ☐ Junket / tour operator d ☐ Employee e ☐ Check cashing operator
f ☐ Supplier g ☐ Concessionaire h ☐ Other (Explain in Part VI)

22 Does casino/card club still have a business association and/or an employee/employer relationship with suspect?
a ☐ Yes b ☐ No If no, why? c ☐ Barred d ☐ Resigned e ☐ Terminated f ☐ Other (Specify in Part VI)

23 Date action taken(22) ___/___/___ MM DD YYYY

Part II Suspicious Activity Information

*24 Date or date range of suspicious activity
From ___/___/___ MM DD YYYY To ___/___/___ MM DD YYYY

*25 Total dollar amount involved in suspicious activity $ .00

* 26 Type of suspicious activity:
a ☐ Bribery/gratuity
b ☐ Check fraud
c ☐ Credit/debit card fraud
d ☐ Embezzlement/theft
e ☐ Large U.S. currency exchange
f ☐ Minimal gaming with large tranactions
g ☐ Misuse of position
h ☐ Money laundering
i ☐ No apparent business or lawful purpose
j ☐ Structuring
k ☐ Unusual use of negotiable instruments (checks)
l ☐ Use of multiple credit or deposit accounts
m ☐ Unusual use of wire transfers
n ☐ Unusual use of counter checks (Markers)
o ☐ False or conflicting ID
p ☐ Terrorist financing
q ☐ Other (Describe in Part VI)

Part III Law Enforcement or Regulatory Contact Information

27 If law enforcement or a regulatory agency has been contacted (excluding submission of a SARC), check the appropriate box.
a ☐ DEA
b ☐ U.S. Attorney (** 28)
c ☐ IRS
d ☐ FBI
e ☐ U.S. Customs Service
f ☐ U.S. Secret Service
g ☐ Local law enforcement
h ☐ State gaming commission
i ☐ State law enforcement
j ☐ Tribal gaming commission
k ☐ Tribal law enforcement
l ☐ Other (List in item 28)

28 Other authority contacted (for box 27 g through l) ** List U.S. Attorney office here. | 29 Name of person contacted (for all of box 27)

30 Telephone number of individual contacted in box 29 ( ) | 31 Date Contacted ___/___/___ MM DD YYYY

Catalog No. XXXXXX

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Part IV Reporting Casino or Card Club Information 2

*32 Trade name of casino or card club	*33 Legal name of casino or card club	*34 EIN

35 Address

*36 City	*37 State	*38 ZIP code
		—

39 Type of gaming institution

a ☐ State licensed casino b ☐ Tribal licensed casino c ☐ Card club d ☐ Other (specify)_____

Part V Contact for Assistance

*40 Last name of individual to be contacted regarding this report	*41 First name	*42 Middle initial

*43 Title/Position	*44 Work phone number	*45 Date report prepared
	( ) —	___/___/___ MM DD YYYY

Part VI Suspicious Activity Information - Narrative*

Explanation/description of suspicious activity(ies). This section of the report is **critical**. The care with which it is completed may determine whether or not the described activity and its possible criminal nature are clearly understood by investigators. Provide a clear, complete and chronological description (**not exceeding this page and the next page**) of the activity, including what is unusual, irregular, or suspicious about the transaction(s), using the checklist below as a guide as you prepare your account.

a. **Describe** the conduct that raised suspicion.
b. **Explain** whether the transaction(s) was completed or only attempted.
c. **Describe** supporting documentation and retain such documentation for your file for five years.
d. **Explain** who benefited, financially or otherwise, from the transaction(s), how much and how (if known).
e. **Describe and retain** any admission or explanation of the transaction(s) provided by the subject(s), or other persons. Indicate to whom and when it was given.
f. **Describe and retain** any evidence of cover-up or evidence of an attempt to deceive federal or state examiners, or others.
g. **Indicate** where the possible violation of law(s) took place (e.g., branch, cage, specific gaming pit, specific gaming area).
h. **Indicate** whether the suspicious activity is an isolated incident or relates to another transaction.
i. **Indicate** whether there is any related litigation; if so, specify its status.
j. **Recommend** any further investigation that might assist law enforcement authorities.
k. **Indicate** whether any information has been excluded from this report; if so, state reasons.
l. **Indicate** whether any U.S. or foreign currency and/or U.S. or foreign negotiable instrument(s) were involved. If foreign, provide the amount, name of currency, and country of origin.
m. **Indicate** whether funds or assets were recovered and, if so, enter the dollar value of the recovery in whole dollars only.
n. **Indicate** any additional account number(s), and any foreign bank(s) account numbers which may be involved.
o. **Indicate** for a foreign national any available information on subject's passport(s), visa(s), and/or identification card(s). Include date, country, city of issue, issuing authority, and nationality.
p. **Describe** any suspicious activities that involve transfer of funds to or from a foreign country, or any exchanges of a foreign currency. Identify the currency, country, sources and destinations of funds.
q. **Describe** subject(s) position if employed by the casino or card club (*e.g.*, dealer, pit supervisor, cage cashier, host, *etc.*).
r. **Indicate** the type of casino or card club filing this report, if this is not clear from Part IV.
s. **Describe** the subject only if you do not have the identifying informtion in Part I or if multiple individuals use the same identification. Use descriptors such as male, female, age, etc.
t. **Indicate** any wire transfer in or out identifier numbers.

u. **If correcting** a prior report, complete the form in its entirety and note the changes here in Part VI.

Information already provided in earlier parts of this form need not necessarily be repeated if the meaning is clear.

Supporting documentation should not be filed with this report. Maintain the information for your files.

Enter explanation/description in the space below. Continue on the next page if necessary.

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Suspicious Activity Report Narrative (continued from page 2) 3

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Paperwork Reduction Act Notice: The purpose of this form is to provide an effective means for financial institutions to notify appropriate law enforcement agencies of suspicious transactions that occur by, through, or at the financial institutions. This report is required by law, pursuant to authority contained in 31 U.S.C. 5318(g). Information collected on this report is confidential (31 U.S.C. 5318(g)). Federal securities regulatory agencies and the U.S. Departments of Justice and Treasury, and other authorized authorities may use and share this information. Public reporting and record keeping burden for this form is estimated to average 45 minutes per response, and includes time to gather and maintain information for the required report, review the instructions, and complete the information collection. Send comments regarding this burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503 and to the Financial Crimes Enforcement Network, Attn.: Paperwork Reduction Act, P.O. Box 39, Vienna VA 22183-0039. The agency may not conduct or sponsor, and an organization (or a person) is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Suspicious Activity Report Instructions 4

Safe Harbor Federal law (31 U.S.C. 5318(g)(3)) provides complete protection from civil liability for all reports of suspicious transactions made to appropriate authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this report's instructions or are filed on a voluntary basis. Specifically, the law provides that a financial institution, and its directors, officers, employees and agents, that make a disclosure of any possible violation of law or regulation, including in connection with the preparation of suspicious activity reports, "shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any state, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure".

Notification Prohibited Federal law (31 U.S.C. 5318(g)(2)) provides that a financial institution, and its directors, officers, employees, and agents who, voluntarily by means of a suspicious activity report, report suspicious transactions to the government, may not notify any person involved in the transaction that the transaction has been reported.

In situations involving suspicious transactions requiring immediate attention, such as when a reportable transaction is ongoing, the financial institution shall immediately notify, by telephone, appropriate law enforcement and financial institution regulatory authorities in addition to filing a timely suspicious activity report.

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When To File A Report:

1. Every casino and card club (for purposes of 31 CFR 103, a "reporting casino"), shall file with FinCEN, to the extent and in the manner required by 31 CFR 103, a report of any suspicious transaction relevant to a possible violation of law or regulation. A casino may also file with FinCEN, by using the Suspicious Activity Report by Casinos (SARC), a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by 31 CFR 103.

2. A transaction requires reporting under the terms of 31 CFR 103.21 if it is conducted or attempted by, at, or through a casino, and involves or aggregates at least $5,000 in funds or other assets, and the casino knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

   (i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

   (ii) Is designed, whether through structuring or other means, to evade any requirements of 31 CFR 103 or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5332;

   (iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

   (iv) Involves use of the casino to facilitate criminal activity.

3. A SARC shall be filed no later than 30 calendar days after the date of the initial detection by the reporting casino of facts that may constitute a basis for filing a SAR under this section. If no suspect is identified on the date of such initial detection, a casino may delay filing a SARC for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the reporting casino shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SARC. Casinos wishing to voluntarily report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1-866-556-3974 in addition to filing timely a SARC if required by 31 CFR 103.

4. **Exceptions.** A casino is not required to file a SARC for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

4. The Bank Secrecy Act requires financial institutions to file currency transaction reports (CTRs) in accordance with the Department of the Treasury's implementing regulations (31 CFR Part 103). These regulations require a financial institution to file a CTR whenever a currency transaction exceeds $10,000. CFR 31 103.22(b)(2) requires that all casinos and card clubs (except in Nevada) file using IRS form 8362 (CTRC). Nevada Gaming Commission Regulation 6A requires Nevada casinos to use IRS from 8852 (CTRC-N). If a currency transaction exceeds $10,000 and is suspicious, the institution must file both a CTR (reporting the currency transaction) and a suspicious activity report (reporting the suspicious aspects of the transaction). If a currency transaction is $10,000 or less and is suspicious, the institution should only file a suspicious activity report. Appropriate records must be maintained in each case.

See: 31 CFR Part 103

General Instructions

A. Abbreviations and Definitions

1. AKA--also known as
2. DBA--doing business as
3. DEA--Drug Enforcement Administration
4. EIN-- Employer Identification Number
5. FBI-- Federal Bureau of Investigation
6. IRS-- Internal Revenue Service (AML or CI)
7. ITIN-- Individual Tax Identification Number
8. SSN-- Social security number

B. How to Make a Report:

1. Send each completed suspicious activity report to:

Detroit Computing Center
ATTN: SARC
P.O. Box 32621
Detroit, MI 48232-5980

2. Leave blank any items that do not apply or for which information is unavailable.

3. Items marked with an **asterisk** * are considered critical and **are required to be completed if known.**

4. Complete each suspicious activity report by providing as much information as possible on initial and corrected reports.

5. Do not include supporting documentation with the suspicious activity report filed. Identify and retain a copy of the suspicious activity report and all supporting documentation or business record equivalents for your files for five (5) years from the date of the suspicious activity report. All supporting documentation such as, canceled checks, confessions, credit bureau reports, credit slips, identification credentials, spreadsheets, photographs, surveillance audio and/or video recording media, and surveillance logs must be made available to appropriate authorities upon request.

6. If more than one subject is being reported, make a copy of page 1 and complete only the subject information Part I, and attach the additional page(s) behind page 1. If more space is needed to complete any other item(s), identify that item in Part VI by "item number", and provide the additional information.

7. Type or complete the report using block written letters.

8. Enter all **dates** in MM/DD/YYYY format where MM=month, DD=day, and YYYY=year. Precede any single number with a zero, *i.e.*, 01, 02, etc.

9. Enter all **telephone numbers** with (area code) first and then the seven numbers, using the format, (XXX) XXX-XXXX. List international telephone and fax numbers in Part VI.

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10. Always enter an **individual's name** by entering the last name, first name, and middle initial (if known). If a legal entity is listed, enter its name in the last name field.

11. Enter all **identifying numbers** (Alien registration, Driver's License/State ID, EIN, ITIN, Foreign National ID, Passport, SSN, etc.) starting from left to right. Do not include spaces, dashes or other punctuation.

12. Enter all **Post Office ZIP codes** with at least the first five numbers (all nine (ZIP+4)) if known) and listed from left to right.

13. Enter all **monetary amounts** in U.S. Dollars. Use whole dollar amounts rounded up when necessary. Use this format: $0,000,000.00. If foreign currency is involved, state name of the currency and country of origin.

14. **Addresses, general.** Enter the permanent street address, city, two letter state/territory abbreviation used by the U.S. Postal Service and ZIP code (ZIP+4 if known) of the individual or entity. A post office box number should not be used for an individual, unless no other address is available. For an individual also enter any apartment number or suite number, and road or route number. If a P.O. Box is used for an entity, enter the street name, suite number, and road or route number. If the address of the individual or entity is in a foreign country, enter the city, province or state, postal code and the name of the country. Complete any part of the address that is known, even if the entire address is not known. If from the United States, leave country box blank.

C. Specific Suspicious Activity Report Preparation Instructions:

Item 1-- *Check box, "corrects prior report", if this report is filed to correct a previously filed SARC. To correct a report, a new SARC must be completed in its entirety. Also note corrected information in Part VI, (see line "u").

Part I Subject Information

Note: Casinos and card clubs may rely upon their own internal records, including copies of federal forms, which contain verified customer information, to identify the subjects of these reports. These records may include credit, deposit, or check cashing account records; or a filed IRS Form 8362, (CTRC), IRS Form 8852, (CTRC-N), IRS Form W-2G, (Certain Gambling Winnings) (*e.g.*, pertaining to a keno or slot win), IRS form W-9 (Request for Taxpayer Identification Number and Certification), or any tax or other form containing such customer information. If casinos do not have verified identification information on the customer, they should consult whatever other sources of customer information that are available within internal records (player rating records, slot club records, etc.). If the subject is an "unknown," casinos should consider using whatever other internal sources are available to obtain customer identification (hotel registrations, show reservations, credit card numbers, riverboat casino reservation records etc.) .

Item 2a-- Check this box if more than one subject. (*e.g.*, multiple subjects or a subject and an agent). Make a copy of page 1 and fill in the data blocks for the additional subject. Make as many copies of page 1 as necessary.

Item 2b-- If no identification information about the subject is available, check box 2b. This will alert law enforcement and regulatory users of the SARC database that this information has not been inadvertently omitted.

Items 3, 4 and 5-- *Subject's name. See General Instruction B10. If box 2a is checked, see instructions for item 2a above. Attach the additional copies to the report behind page 1.

Item 6-- also known as (AKA-individual), or doing business as (DBA-entity). If a reporting casino or card club has knowledge of a subject's separate "AKA" or an entity's DBA name, enter it in item 6.

Item 7-- Occupation/Type of business. Fully identify the occupation, profession or business of the individual or entity shown in **Items 3** through **5** (*e.g.*, accountant, attorney, carpenter, truck driver, check casher, etc.). Do not use nondescript terms such as merchant, self-employed, businessman, or salesperson. If the subject's business activities can be described more fully than just by occupation, provide additional information in Part VI. Indicate in **Item 7** if unknown.

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Items 8, 9, 10, 11 and 12-- *Address. See General Instructions B12 and B14.

Item 13-- Vehicle license number (optional). Enter the subject's vehicle license plate number and issuing state, if known or available.

Item 14-- *SSN/ITIN (individual) or EIN (entity). See General Instruction B11 and definitions. If the subject named in **Items 3** through **5** is a U.S. Citizen or an alien with a SSN, enter his or her SSN in **Item 13**. If that individual is an alien who has an ITIN, enter that number. If the subject is an entity, enter the EIN.

Item 15-- *Account number. See General Instruction B11. Enter the number of any account in or through which the suspicious activity occurred. If an account is not affected or if no affected account is known, mark the "no account affected" box. Check box to indicate if the account is open or closed. If more than one account is affected, provide the additional information in Part VI.

Item 16-- Date of birth. See General Instruction B8. If an individual is named in **Items 3** through **5**, enter the date of birth. If the month and/or day is not available or is unknown, fill in with zeros (*e.g.*, "01/00/1969" indicates an unknown date in January, 1969).

Item 17-- *Government issued identification (if available). See General Instruction B11. Check the appropriate box(es) showing the type of document used to verify the subject's identity. If you check box "d" (Other), be sure to specify the type of document used. In box "e" list the number of the identifying document. In box "f" list the issuing state or country. If more space is required, enter the information in Part VI.

Items 18, 19 and 20-- Telephone numbers and e-mail address. See General Instruction B9 (telephone). List any additional number(s) (*e.g.*, hotel, *etc.*) in Part VI. List e-mail address if available.

Item 21-- Affiliation/relationship to casino. If box "d" (employee) is checked, indicate in Part VI the subject's position (*e.g.*, dealer, pit supervisor, cage cashier, host, *etc.*) and the subject's involvement. If box "h" (other) is checked, briefly describe in Part VI.

Items 22 and 23-- Continuing business association and/or employer/employee relationship. If the "no" box is checked, check the appropriate box to indicate what action occurred that ended the relationship. Indicate the date that action was taken in **Item 23** (see General Instruction B8).

PART II Suspicious Activity Information*

Item 24-- *Date or date range of suspicious activity. See General Instruction B8. Enter the date of the reported activity in the "From" field. If more than one day, indicate the duration of the activity by entering the first date in the "From" field and the last date in the "To" field. If the same individual or organization conducts multiple or related activities within the 30 calendar day period after the date of initial detection, the reporting institution may consider reporting the suspicious transactions on one form but only if doing so will fully describe what has occurred. A new report must be filed for other related suspicious transactions committed after the initial detection period.

Item 25-- *Total dollar amount. See General Instruction B13. Enter the total dollar value of the funds or asset(s) involved in the suspicious activity which is conducted by the same individual or organization within the 30 calendar day period after the date of initial detection. For multiple or related suspicious transactions, show the breakdown of this aggregated total in Part VI. For individual(s) with a relationship to the casino (reference **Item 21** "b" through "h"), the value of this item can be zero (0). Do not use any words, such as "thousand", "million", etc.

Item 26-- *Type of suspicious activity. Check the box(es), which best identify the suspicious activity. If the activity involves exchanging numerous small denomination bills for large denomination bills at the cage, after the subject engages in minimal or no gaming activity, check boxes "e" and "f". Check box "j" for Structuring when a subject acting alone, in conjunction with, or on behalf of other subjects, conducts or attempts to conduct activity designed to evade any recordkeeping or reporting requirement promulgated under the Bank Secrecy Act. If you check box "q" for Other, you must specify, in Part VI, the type of suspicious activity that occurred that is not listed in **Item 26**.

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Part III Law Enforcement or Regulatory Contact Information

Item 27, 28, and 29-- Contacting enforcement authorities. If no contact, go to **Part IV.** See General Instructions "A" "Abbreviations and Definitions" for law enforcement and regulatory identities. If the casino/card club has contacted any law enforcement or regulatory agency about the suspicious activity, by telephone or written communication (excluding submission of a SARC), check the appropriate box in item 27. In **Item 28** provide the name of the authority contacted if box "b" or boxes "g" through "l" are checked. In **Item 29**, provide the name of the individual contacted for all of box 27. Contact with law enforcement agencies does not eliminate the requirement to file the SARC.

Item 30-- Telephone number. See General Instruction B9. Enter telephone number of the individual listed in item 29.

Item 31-- Date Contacted. See General Instruction B8.

Part IV Reporting Casino or Card Club Information*

Item 32-- *Casino or Card Club's trade name*. Enter the name by which the casino or card club does business and is commonly known. Do not enter a corporate, partnership, or other entity name unless such name is the one by which the casino is commonly known.

Item 33-- *Casino or Card Club's legal name. Enter the legal name as shown on required tax filings, only if different from the trade name shown in **Item 32**. The legal name should match the name shown on the charter or other document creating the entity, and which is identified with the casino's established employer identification number.

Item 34-- *Employer identification number. Enter the institution's nine-digit EIN.

Items 35, 36, 37, and 38-- *Address. See General Instruction B14.

Item 39-- Type of gaming institution. -Check the appropriate box for the type of gaming institution. Check box "a" for a land-based or riverboat casino that is duly licensed by a State, Territory or Insular Possession of the United States. Check box "b" for a tribal casino (*i.e.*, a Class III gaming operation). Check boxes "a" and "b" for a tribal casino duly licensed by a state gaming regulatory agency. Check box "c" for a card club, gaming club, and card room or gaming room(including one operating on Indian lands). If you check box "d" for "**Other**", be sure to specify the type of gaming institution (e.g., race track).

Part V Contact for Assistance*

Items 40, 41, and 42-- *Contact Individual. See General Instruction B10.

Item 43 *Title/Position-- Enter the job title/position of the contact individual.

Item 44 *Work phone number-- See General Instruction B9.

Item 45 *Date report prepared-- See General Instructions item B8.

PART VI *Suspicious Activity Information -- Narrative See page 2 for instructions.

[FR Doc. 02–24146 Filed 9–25–02; 8:45 am]
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DRAFT

Federal Register

Thursday,
September 26, 2002

Part III

Department of Health and Human Services

National Institutes of Health

Privacy Act of 1974; Annual Publication of Systems of Records; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: National Institutes of Health, HHS.

ACTION: Privacy Act: Annual Re-publication of Notices of Revised Systems of Records.

SUMMARY: The National Institutes of Health (NIH) has conducted a comprehensive review of all Privacy Act systems of records and is publishing the resulting revisions. None of the revisions meet the OMB criteria for a new or altered system of records requiring an advance period for public comment. These changes are in compliance with Circular A–130, Appendix 1. The notices re-published below are complete and accurate as of August 31, 2002

SUPPLEMENTARY INFORMATION: The following information summarizes the current status of systems of records which had minor modifications during 1998 and lists all systems maintained by NIH:

A. System Name

The following systems have been updated to reflect a change in the name of the system.

09–25–0005, Administration: Library Operations and User I.D. File, HHS/NIH/OD
09–25–0012, Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC
09–25–0014, Clinical Research: Student Records, HHS/NIH/CC
09–25–0036, Extramural Awards and Chartered Advisory Committees: IMPAC (Grant/Contract/Cooperative Agreement/Chartered Advisory Committee Information), HHS/NIH/OER and HHS/NIH/CMO
09–25–0054, Administration: Property Accounting, HHS/NIH/ORS
09–25–0140, International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC
09–25–0158, Administration: Records of Applicants and Awardees of the NIH Intramural Research Training Awards Program, HHS/NIH/OD
09–25–0168, Invention, Patent, and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees, Fellowship Recipients, and Contractors, HHS/PHS/FDA/NIH/OTT
09–25–0200, Clinical, Epidemiologic, and Biometric Studies of the National Institutes of Health (NIH), HHS/NIH/OD
09–25–0209, Subject-Participants in Drug Abuse Research Studies on Drug Dependence and in Research Supporting New Drug Applications, HHS/NIH/NIDA
09–25–0213, Administration: Employee Conduct Investigative Records, HHS/NIH/OM/OA/OMA

B. Security Classification

None.

C. System Location

The following systems have been updated to reflect a change in the system location or location address. These changes do not affect the access by the individual to the individual's records.

09–25–0005, Administration: Library Operations and User I.D. File, HHS/NIH/OD
09–25–0007, Administration: NIH Safety Glasses Issuance Program, HHS/NIH/ORS
09–25–0014, Clinical Research: Student Records, HHS/NIH/CC
09–25–0033, International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC
09–25–0034, International Activities: Scholars-in-Residence Program, HHS/NIH/FIC
09–25–0036, Extramural Awards and Chartered Advisory Committees: IMPAC (Grant/Contract/Cooperative Agreement/Chartered Advisory Committee Information), HHS/NIH/OER and HHS/NIH/CMO
09–25–0041, Research Resources: Scientists Requesting Hormone Distribution, HHS/NIH/NIDDK
09–25–0054, Administration: Property Accounting, HHS/NIH/ORS
09–25–0078, Administration: Consultant File, HHS/NIH/NHLBI
09–25–0087, Administration: Senior Staff, HHS/NIH/NIAID
09–25–0099, Clinical Research: Patient Medical Records, HHS/NIH/CC
09–25–0105, Administration: Health Records of Employees, Visiting Scientists, Fellows, and Others Who Receive Medical Care Through the Employee Health Unit, HHS/NIH/ORS
09–25–0106, Administration: Office of the NIH Director and Institute/Center Correspondence Records, HHS/NIH/OD
09–25–0108, Personnel: Guest Researchers, Special Volunteers, and Scientists Emeriti, HHS/NIH/OHRM
09–25–0115, Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID
09–25–0140, International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC
09–25–0168, Invention, Patent, and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees, Fellowship Recipients, and Contractors, HHS/PHS/FDA/NIH/OTT
09–25–0169, Medical Staff-Credentials Files, HHS/NIH/CC
09–25–0203, National Institute on Drug Abuse, Intramural Research Program, Federal Prisoner and Non-Prisoner Research Files, HHS/NIH/NIDA
09–25–0210, Shipment Records of Drugs of Abuse to Authorized Researchers, HHS/NIH/NIDA

D. Categories of Individuals Covered by the System

The following systems have been updated to reflect a change in the categories of individuals covered by the system.

09–25–0014, Clinical Research: Student Records, HHS/NIH/CC
09–25–0200, Clinical, Epidemiologic, and Biometric Studies of the National Institutes of Health, (NIH), HHS/NIH/OD
09–25–0207, Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse and on Treatment Medications, HHS/NIH/NIDA
09–25–0208, Drug Abuse Treatment Outcome Study (DATOS), HHS/NIH/NIDA
09–25–0209, Subject-Participants in Drug Abuse Research Studies on Drug Dependence and in Research Supporting New Drug Applications, HHS/NIH/NIDA

E. Categories of Records in the System

The following systems have been updated to reflect a change in the categories of records in the system.

09–25–0011, Clinical Research: Blood Donor Records, HHS/NIH/CC
09–25–0160, United States Renal Data System (USRDS), HHS/NIH/NIDDK

F. Legal Authority for Maintenance of the System

None of the systems have been updated to reflect a change in the legal authority for the maintenance of the system.

G. Purpose

The following systems have been updated to reflect a change in the purpose of the system.

09–25–0041, Research Resources: Scientists Requesting Hormone Distribution, HHS/NIH/NIDDK

09–25–0160, United States Renal Data System (USRDS), HHS/NIH/NIDDK

09–25–0200, Clinical, Epidemiologic, and Biometric Studies of the National Institutes of Health (NIH), HHS/NIH/OD

09–25–0209, Subject-Participants in Drug Abuse Research Studies on Drug Dependence and in Research Supporting New Drug Applications, HHS/NIH/NIDA

H. Routine Uses of Records

The following systems have been updated to reflect a change in the routine uses of the system.

09–25–0005, Administration: Library Operations and User I.D. File, HHS/NIH/OD

09–25–0014, Clinical Research: Student Records, HHS/NIH/CC

09–25–0099, Clinical Research: Patient Medical Records, HHS/NIH/CC

09–25–0158, Administration: Records of Applicants and Awardees of the NIH Intramural Research Training Awards Program, HHS/NIH/OD

09–25–0209, Subject-Participants in Drug Abuse Research Studies on Drug Dependence and in Research Supporting New Drug Applications, HHS/NIH/NIDA

I. Storage

The following systems have been updated to reflect a change in the storage of the system.

09–25–0005, Administration: Library Operations and User I.D. File, HHS/NIH/OD

09–25–0012, Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC

09–25–0014, Clinical Research: Student Records, HHS/NIH/CC

09–25–0036, Extramural Awards and Chartered Advisory Committees: IMPAC (Grant/Contract/Cooperative Agreement/Chartered Advisory Committee Information), HHS/NIH/OER and HHS/NIH/CMO

09–25–0108, Personnel: Guest Researchers, Special Volunteers, and Scientists Emeriti, HHS/NIH/OHRM

09–25–0158, Administration: Records of Applicants and Awardees of the NIH Intramural Research Training Awards Program, HHS/NIH/OD

09–25–0169, Medical Staff-Credentials Files, HHS/NIH/CC

09–25–0202, Patient Records on PHS Beneficiaries (1935–1974) and Civilly Committed Drug Abusers (1967–1976) Treated at the PHS Hospitals in Fort Worth, Texas, or Lexington, Kentucky, HHS/NIH/NIDA

J. Retrieval

The following system has been updated to reflect a change in the retrieval of the system.

09–25–0160, United States Renal Data System (USRDS), HHS/NIH/NIDDK

K. Safeguards

The following systems have been updated to reflect a change in the safeguards of the system.

09–25–0005, Administration: Library Operations and User I.D. File, HHS/NIH/OD

09–25–0012, Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC

09–25–0014, Clinical Research: Student Records, HHS/NIH/CC

09–25–0036, Extramural Awards and Chartered Advisory Committees: IMPAC (Grant/Contract/Cooperative Agreement/Chartered Advisory Committee Information), HHS/NIH/OER and HHS/NIH/CMO

09–25–0106, Administration: Office of the NIH Director and Institute/Center Correspondence Records, HHS/NIH/OD

09–25–0115, Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID

09–25–0160, United States Renal Data System (USRDS), HHS/NIH/NIDDK

09–25–0202, Patient Records on PHS Beneficiaries (1935–1974) and Civilly Committed Drug Abusers (1967–1976) Treated at the PHS Hospitals in Fort Worth, Texas, or Lexington, Kentucky, HHS/NIH/NIDA

09–25–0209, Subject-Participants in Drug Abuse Research Studies on Drug Dependence and in Research Supporting New Drug Applications, HHS/NIH/NIDA

09–25–0210, Shipment Records of Drugs of Abuse to Authorized Researchers, HHS/NIH/NIDA

L. Retention and Disposal

The following systems have been updated to reflect a change in the retention and disposal of the system.

09–25–0207, Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse and on Treatment Medications, HHS/NIH/NIDA

09–25–0208, Drug Abuse Treatment Outcome Study (DATOS), HHS/NIH/NIDA

09–25–0209, Subject-Participants in Drug Abuse Research Studies on Drug Dependence and in Research Supporting New Drug Applications, HHS/NIH/NIDA

M. System Manager(s) and Address

The following systems have been updated to reflect a change in the name and/or address of the system manager(s).

09–25–0005, Administration: Library Operations and User I.D. File, HHS/NIH/OD

09–25–0007, Administration: NIH Safety Glasses Issuance Program, HHS/NIH/ORS

09–25–0011, Clinical Research: Blood Donor Records, HHS/NIH/CC

09–25–0012, Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC

09–25–0014, Clinical Research: Student Records, HHS/NIH/CC

09–25–0033, International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC

09–25–0034, International Activities: Scholars-in-Residence Program, HHS/NIH/FIC

09–25–0036, Extramural Awards and Chartered Advisory Committees: IMPAC (Grant/Contract/Cooperative Agreement/Chartered Advisory Committee Information), HHS/NIH/OER and HHS/NIH/CMO

09–25–0041, Research Resources: Scientists Requesting Hormone Distribution, HHS/NIH/NIDDK

09–25–0054, Administration: Property Accounting, HHS/NIH/ORS

09–25–0078, Administration: Consultant File, HHS/NIH/NHLBI

09–25–0087, Administration: Senior Staff, HHS/NIH/NIAID

09–25–0099, Clinical Research: Patient Medical Records, HHS/NIH/CC

09–25–0105, Administration: Health Records of Employees, Visiting Scientists, Fellows, and Others Who Receive Medical Care Through the Employee Health Unit, HHS/NIH/ORS

09–25–0106, Administration: Office of the NIH Director and Institute/Center Correspondence Records, HHS/NIH/OD

09–25–0108, Personnel: Guest Researchers, Special Volunteers, and Scientists Emeriti, HHS/NIH/OHRM

09–25–0115, Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID

09–25–0118, Contracts: Professional Services Contractors, HHS/NIH/NCI

09–25–0121, International Activities: Senior International Fellowships Program, HHS/NIH/FIC

09–25–0124, Administration: Pharmacology Research Associates, HHS/NIH/NIGMS

09–25–0140, International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC

09–25–0156, Records of Participants in Programs and Respondents in Surveys

Used to Evaluate Programs of the Public Health Service, HHS/PHS/NIH/OD
09–25–0158, Administration: Records of Applicants and Awardees of the NIH Intramural Research Training Awards Program, HHS/NIH/OD
09–25–0160, United States Renal Data System (USRDS), HHS/NIH/NIDDK
09–25–0166, Administration: Radiation and Occupational Safety and Health Management Information Systems, HHS/NIH/ORS
09–25–0167, National Institutes of Health (NIH) TRANSHARE Program, HHS/NIH/OD
09–25–0168, Invention, Patent, and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees, Fellowship Recipients, and Contractors, HHS/PHS/FDA/NIH/OTT
09–25–0169, Medical Staff-Credentials Files, HHS/NIH/CC
09–25–0200, Clinical, Epidemiologic, and Biometric Studies of the National Institutes of Health (NIH), HHS/NIH/OD
09–25–0202, Patient Records on PHS Beneficiaries (1935–1974) and Civilly Committed Drug Abusers (1967–1976) Treated at the PHS Hospitals in Fort Worth, Texas, or Lexington, Kentucky, HHS/NIH/NIDA
09–25–0203, National Institute on Drug Abuse, Intramural Research Program, Federal Prisoner and Non-Prisoner Research Files, HHS/NIH/NIDA
09–25–0207, Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse and on Treatment Medications, HHS/NIH/NIDA
09–25–0208, Drug Abuse Treatment Outcome Study (DATOS), HHS/NIH/NIDA
09–25–0209, Subject-Participants in Drug Abuse Research Studies on Drug Dependence and in Research Supporting New Drug Applications, HHS/NIH/NIDA
09–25–0210, Shipment Records of Drugs of Abuse to Authorized Researchers, HHS/NIH/NIDA
09–25–0211, Intramural Research Program Records of In- and Out-Patients with Various Types of Alcohol Abuse and Dependence, Relatives of Patients with Alcoholism, and Healthy Volunteers, HHS/NIH/NIAAA
09–25–0213, Administration: Employee Conduct Investigative Records, HHS/NIH/OM/OA/OMA
09–25–0216, Administration: NIH Electronic Directory, HHS/NIH

N. Notification Procedure

The following systems have been updated to reflect a change in the notification procedure of the system.
09–25–0041, Research Resources: Scientists Requesting Hormone Distribution, HHS/NIH/NIDDK
09–25–0078, Administration: Consultant File, HHS/NIH/NHLBI
09–25–0115, Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID
09–25–0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the Public Health Service, HHS/PHS/NIH/OD
09–25–0200, Clinical, Epidemiologic, and Biometric Studies of the National Institutes of Health (NIH), HHS/NIH/OD

O. Record Access Procedure

The following system has been updated to reflect a change in the record access procedure of the system.
09–25–0012, Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC

P. Contesting Record Procedure

None.

Q. Record Source Categories

The following systems have been updated to reflect a change in the record source categories of the system.
09–25–0012, Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC
09–25–0160, United States Renal Data System (USRDS), HHS/NIH/NIDDK

R. Systems Exempted From Certain Provisions of the Act

None.

S. No Changes

None.

T. Edits

None.

U. Published Prior to Update

System 09–25–0165, ''NIH Office of Loan Repayment and Scholarship (OLRS) Records System, HHS/NIH/OD''was previously altered and updated. It was published in the **Federal Register** on February 8, 2002.

V. Deleted Systems of Records

The following systems have been deleted.
09–25–0093, Administration: Authors, Reviewers, Editorial Board, and Members of the Journal of the National Cancer Institute, HHS/NIH/NCI
09–25–0112, Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD
09–25–0161, Administration: NIH Consultant File, HHS/NIH/CSR

Dated: September 13, 2002.

Timothy J. Wheeles,

Director, Division of Management Support, OMA/OA/OM/OD/NIH.

09–25–0005

SYSTEM NAME:

Administration: Library Operations and NIH Library User I.D. File, HHS/NIH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is an umbrella system comprising separate sets of records located in National Institutes of Health (NIH) facilities in Bethesda, Maryland, or facilities of contractors of the NIH. Write to the appropriate System Manager listed below for list of current contractor locations.

Clinical Center (CC), Building 10, Room 1L07, 10 Center Drive, Bethesda, MD 20892.

National Library of Medicine (NLM), Building 38, Room 1S33, 8600 Rockville Pike, Bethesda, MD 20894.

National Library of Medicine (NLM), Building 38, Room 1N21, 8600 Rockville Pike, Bethesda, MD 20894.

National Library of Medicine (NLM), Building 38, Room B1E21, 8600 Rockville Pike, Bethesda, MD 20894.

National Technical Information Service (NTIS), Accounting Department, 8001 Forbes Place, Room 208F, Springfield, VA 22151.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of library services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, organization, address, phone number, photographs, issue date, email address, signature, user code and identification number; and when applicable, credit card number and billing information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 301 of the Public Health Service Act, describing the general powers and duties of the Public Health Service relating to research and investigation (42 U.S.C. 241).

PURPOSE(S):

1. To monitor library material, services, and circulation control.
2. To provide user documentation.
3. To provide copying services (duplication of library materials).
4. To manage invoice and billing transactions for library services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) 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 (d) 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 litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

Disclosure may be made to contractors and staff to monitor library material, services, circulation control; to provide user documentation; and to process or refine the records. Recipients are required to maintain Privacy Act safeguards with respect to those records.

Disclosure may be made for billing purposes to: (a) contractors providing copying services and (b) NTIS for document delivery services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer tape and disk, paper and file cards.

RETRIEVABILITY:

Records are retrieved by name, user code and/or identification number.

SAFEGUARDS:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to Library staff members who need to verify that Library identification cards have been issued to those Library users requesting services such as reference and interlibrary loans. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager. The contractor maintains a list of personnel having authority to access records to perform their duties.

2. Physical Safeguards: The offices housing the cabinets and file drawers for storage of records are locked during all library off-duty hours. During all duty hours offices are attended by employees who maintain the files. The contractor has secured records storage areas which are not left unattended during the working hours and file cabinets which are locked after hours.

3. Procedural Safeguards: Access to the file is strictly controlled by employees who maintain the files. Records may be removed from files only at the request of the system manager or other authorized employees. Access to computerized records is controlled by the use of security codes known only to authorized users. Contractor personnel receive instruction concerning the significance of safeguards under the Privacy Act.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

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'' (HHS Records Management Manual, Appendix B–361), item 8000–D–2, which allows records to be kept until superseded or for a maximum period of six years. Refer to the NIH Manual Chapter for specific conditions on disposal.

SYSTEM MANAGER(S) AND ADDRESS:

Management Analyst, Office of Administration, National Library of Medicine (NLM), Building 38A, Room B2N12, 8600 Rockville Pike, Bethesda, MD 20894.

Chief, Reference and Bibliographic Services Section, Library Branch, Office of Research Services, Office of the Director (OD), Building 10, Room 1L21, 10 Center Drive, Bethesda, MD 20892.

Head, Quality Assurance Unit, Preservation and Collection Management Section, Public Services Division, Library Operations, National Library of Medicine (NLM), Building 38, Room B1E21, 8600 Rockville Pike, Bethesda, MD 20894.

Chief, Public Services Division, Library Operations, National Library of Medicine (NLM), Building 38, Room 1S33, 8600 Rockville Pike, Bethesda, MD 20894.

Librarian, History of Medicine Division, National Library of Medicine (NLM), Building 38, Room 1N21, 8600 Rockville Pike, Bethesda, MD 20894.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official at the address specified under Notification Procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individual, NIH Library ID card data.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0007

SYSTEM NAME:

Administration: NIH Safety Glasses Issuance Program, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Unit, Occupational Medical Service, Division of Safety, Office of Research Services (ORS), Building 13, Room G904, 13 South Drive, Bethesda, MD 20892.

Write to the System Manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NIH employees who apply for safety glasses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Explanation of eye impact and hazard occupation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5. U.S.C. 7902.

PURPOSE(S):

Records are used for proper distribution of safety glasses and for proof of delivery.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) 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 (d) 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 litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Access is limited to personnel involved in safety glasses issuance program, to supervisors of employees who have requested glasses, and to personnel involved in accounting.

2. Physical Safeguards: Record storage locations are locked when unattended.

3. Procedural Safeguards: Access to file rooms and files is controlled by system manager or designee.

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'' (HHS Records Management Manual, Appendix B–361), item 1300–B–3, which allows records to be kept for a maximum period of five years. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Division of Safety, Office of Research Services (ORS), Building 31, Room 1C02, 31 Center Drive, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official at the address specified under Notification Procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting information to how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Previous employer and education institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0011

SYSTEM NAME:

Clinical Research: Blood Donor Records, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Transfusion Medicine Department, Clinical Center (CC), Building 10, Room 1C711, 10 Center Drive, Bethesda, MD 20892–1184.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Donors of blood and blood components to be used in the NIH Clinical Center for patient infusions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Past donations, blood types, phenotypes. Laboratory results of infectious disease testing, serologic reactions on all blood samples, donations of blood or blood components.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

''Preparation of Biological Products'' of the Public Health Service Act (42 U.S.C. 263).

PURPOSE(S):

1. To provide a means for contacting blood donors for patient care and research.

2. To provide a medical history of all donors for the transfusion records of each blood unit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors and their staff in order to accomplish the purposes for which the records are collected. The recipients are required to comply with the requirements of the Privacy Act with respect to such records.

2. Certain diseases and conditions, including infectious diseases, may be reported to State or Federal government as required by State or Federal law.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines

that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

5. (a) PHS may inform the sexual and/or needle-sharing partner(s) of a subject individual who is infected with the human immunodeficiency virus (HIV) of their exposure to HIV, under the following circumstances: (1) The information has been obtained in the course of clinical activities at PHS facilities carried out by PHS personnel or contractors; (2) The PHS employee or contractor has made reasonable efforts to counsel and encourage the subject individual to provide the information to the individual's sexual or needle-sharing partner(s); (3) The PHS employee or contractor determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and (4) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices.

(b) PHS may disclose information to State or local public health departments, to assist in the notification of the subject individual's sexual and/or needle-sharing partner(s), or in the verification that the subject individual has notified such sexual or needle-sharing partner(s).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a computer file, on donor cards, and on microfilm.

RETRIEVABILITY:

Records are retrieved by a unique control number assigned to each individual donor.

SAFEGUARDS:

Access is granted only to authorized employees in the Department of Transfusion Medicine including physicians, nurses, technologists, computer operators, and the department's administrative officer.

1. Authorized Users: Access is granted only to authorized employees of the Department of Transfusion Medicine including physicians, nurses technologists, computer operators and the secretary to the Chief.

2. Physical Safeguards: Record facilities are locked when system personnel are not present.

3. Procedural Safeguards: Access to manual files is limited to authorized users. Access to computerized records is controlled by the use of security codes known only to the authorized users.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

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'' (HHS Records Management Manual, Appendix B–361), item 3000–E–50. Refer to the NIH Manual Chapter for specific conditions on disposal.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Transfusion Medicine Department, Clinical Center (CC), Building 10, Room 1C711, 10 Center Drive, Bethesda, MD 20892–1184.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

To obtain access to a record, contact the System Manager at the address specified above. Requesters should provide the same information as is required under the Notification Procedures above. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under Notification Procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Data are collected from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0012

SYSTEM NAME:

Clinical Research: Candidate Healthy Volunteer Records, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Clinical Research Volunteer Program, Building 61, 10 Cloister Court, Bethesda, MD 20892–4754.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Normally healthy individuals who volunteer to participate in NIH studies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Program application, health questionnaire and record of participation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 263.

PURPOSE(S):

1. To determine suitability for participation in the normal volunteer program.

2. To document remuneration of normal volunteers.

3. To provide a record of participation to be used (a) in writing letters of recommendation/reference for the volunteer, and (b) preparing reports on the normal volunteer program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Clinical research data are made available to approved or collaborating researchers, including HHS contractors and grantees.

2. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Program applications and health questionnaires are stored in file folders. Records of participation are stored in databases and date files.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, procedural safeguards such as the following:

1. Authorized Users: Access is granted only to the Healthy Volunteer Program staff and to NIH physicians who have requested the recruitment of volunteers for their clinical research projects.

2. Physical Safeguards: Access to the files is strictly controlled by the files staff. Records may be removed from the file only at the request of the system manager or other authorized employees. Record facilities are locked when system personnel are not present.

3. Procedural Safeguards: Access to the files is strictly controlled by the files staff. Records may be removed from the file only at the request of the system manager or other authorized employees.

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'' (HHS Records Management Manual, Appendix B–361), item 3000–E–61, which allows records to be kept for a maximum period of three years after the volunteer period ends. Refer to the NIH Manual Chapter for specific conditions on disposal.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Clinical Research Volunteer Program, Building 61,10 Cloister Court, Bethesda, MD 20892–4745.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

To obtain access to a record, contact: Clinical Research Volunteer Program, National Institutes of Health, 10 Cloister Court, Building 61, Bethesda, MD 20892–4754 and provide the information described under notification procedures above. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Volunteer.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0014

SYSTEM NAME:

Clinical Research: Student Records, HHS/NIH/OD/OIR/OE.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Education, Office of Intramural Research, Office of the Director (OD), Building 2, Room 2E06, 2 Center Drive, Bethesda, MD 20892–1158.

Write to the System Manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Potential and accepted Clinical and Research Fellows, medical students, and other students in NIH training programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application form, transcripts, references, evaluations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241.

PURPOSE(S):

1. To identify candidates for clinical and research fellow, clinical elective, and other training positions.

2. To maintain a permanent record of those individuals who have received clinical research training at the NIH for historical and reference uses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information may be used to respond to congressional inquiries regarding constituents who have applied for training programs.

2. Information may be used to respond to hospitals and other healthcare institutions seeking verification of training for physicians who trained in NIH clinical programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, electronic databases and disks.

RETRIEVABILITY:

Records are retrieved by name and year.

SAFEGUARDS:

Measures to prevent the unauthorized disclosure of information covered under the Privacy Act are implemented for each training program administered through the Office of Education.

1. Authorized Users: Staff in the Office of Education are instructed to disclose information only to NIH personnel who are involved in the evaluation and selection of candidates for intramural training programs.

2. Physical Safeguards: Paper files and disks are stored in cabinets in a locked room that is under constant surveillance by security personnel. Electronic databases are accessible only with a password on secure web sites.

3. Procedural safeguards: Access to the paper files is strictly controlled by the Office of Education staff. Files may be removed only with the approval of the system manager or other authorized official(s).

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'' (HHS Records Management Manual, Appendix B–361), items 2300–320–1–13, which allows records to be kept up to a maximum period of ten years. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Office of Education, Office of Intramural Research, Office of the Director (OD), Building 2, Room 2E06, 2 Center Drive, Bethesda, MD 20892–1158.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

To obtain access to a record, contact the System Manager at the above address and provide the information described under notification procedures above. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the System Manager at the address specified above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Applicants, universities and teachers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0033

SYSTEM NAME:

International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Fogarty International Center (FIC), Building 31, Room B2C39, 31 Center Drive, Bethesda, MD 20892.

Write to System Manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. citizens qualified in health-related sciences submitting applications through NIH for fellowships for study abroad.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and associated records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

PURPOSE(S):

To perform scientific reviews and evaluations of applicants' suitability of referral to awarding organization in foreign countries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. After review by the operating agency review panel the applications and all supporting documents are forwarded to the foreign organizations or agencies making awards.

2. In addition, such application may be made available to authorized employees and agents of the Federal Government for purposes of investigations, inspections and audits, and, in appropriate cases, to the Department of Justice for prosecution under civil and criminal laws.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. Disclosure may be made to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) 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 (d) 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 litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and fellowship number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to FIC program staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: The records are maintained in locked file cabinets, and offices are locked during off-duty hours.

3. Procedural Safeguards: Access to file rooms and files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employees.

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'' (HHS Records Management Manual, Appendix B–361), items 2300–320–5, which allows records to be destroyed after a maximum period of six years after the close of a case. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of International Training and Research, Fogarty International Center (FIC), Building 31, Room B2C39, 31 Center Drive, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Requests for notification of or access to records should be addressed to the System Manager, as listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under Notification Procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Applicants and persons supplying references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0034

SYSTEM NAME:

International Activities: Scholars-in-Residence Program, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Fogarty International Center (FIC), Building 16, Room 202, 16 Center Drive, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Distinguished scientists and scholars invited to accept NIH scholarships.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment and education histories; references.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2421, ''International Cooperation'' of the PHS Act.

PURPOSE(S):

To administer and award scholarships to distinguished scientists.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information is made available to authorized employees and agents of the Federal Government for purposes of investigations, inspections and audits, and in appropriate cases, to the Department of Justice for prosecution under civil and criminal laws.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) 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 (d) 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 litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to FIC program staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical safeguards: Records are kept in file cabinets. Offices are locked during off-duty hours.

3. Procedural safeguards: Access to files is strictly controlled by files staff. Files may be removed only at the request of the system manager or other authorized employee.

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'' (HHS Records Management Manual, Appendix B–361), items 2300–320–7 which allows records to be destroyed after a maximum period of six years after the close of a case. Refer to the NIH Manual Chapter for specific retention instructions.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Director, Division of Advanced Studies and Policy Analysis, Fogarty International Center (FIC), Building 16, Room 202, 16 Center Drive, Bethesda, MD 20892–6705.

NOTIFICATION PROCEDURE:

Requests for notification of or access to records should be addressed to the System Manager, as listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under Notification Procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information is obtained from invitees, reference sources, and persons supplying recommendations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0036

SYSTEM NAME:

Extramural Awards and Chartered Advisory Committees (IMPAC 2), Contract Information (DCIS), and Cooperative Agreement Information, HHS/NIH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Policy for Extramural Research Administration, Office of Extramural Research, Office of the Director (OD), Rockledge II, Room 2172, 6701 Rockledge Drive, Bethesda, MD 20892.

Office of Federal Advisory Committee Policy, Office of the Director (OD), Building 31, Room 3B–59, 31 Center Drive, Bethesda, MD 20892.

Office of Acquisition Management and Policy, Office of the Director (OD), 6100 Executive Boulevard, Room 6D01, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principal investigators; program directors; program and projects staff and others named in the application; National Research Service Awards (NRSA) trainees and fellows; research career awardees; chartered advisory committee members; contractor personnel; subcontractor personnel; and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Funding applications, awards, associated records, trainee appointments, current and historical information pertaining to chartered advisory committees, and past performance information pertaining to contractors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5. U.S.C. 301; 42 U.S.C. 217a, 241, 282(b)(6), 284a, and 288. 48 CFR Subpart 15.3 and Subpart 42.15.

PURPOSE(S):

1. To support centralized grant programs of the Public Health Service.

Services are provided in the areas of grant application assignment and referral, initial review, council review, award processing and grant accounting. The database is used to provide complete, accurate, and up-to-date reports to all levels of management.

2. To maintain communication with former fellows and trainees who have incurred a payback obligation through the National Research Service Award Program.

3. To maintain current and historical information pertaining to the establishment of chartered advisory committees of the National Institutes of Health and the appointment or designation of their members.

4. To maintain current and historical information pertaining to contracts awarded by the National Institutes of Health, and performance evaluations on NIH contracts and contracts awarded by other Federal agencies that participate in the NIH Contractor Performance System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to the National Technical Information Service (NTIS), Department of Commerce, for dissemination of scientific and fiscal information on funded awards (abstract of research projects and relevant administrative and financial data).

2. Disclosure may be made to the cognizant audit agency for auditing.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. Disclosure may be made to qualified experts not within the definition of Department employees as prescribed in Department regulations for opinions as a part of the application review process.

5. Disclosure may be made to a Federal agency, in response to its request, in connection with the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision in the matter.

6. Disclosure of past performance information pertaining to contractors may be made to a Federal agency upon request. In addition, routine access to past performance information on contractors will be provided to Federal agencies that subscribe to the NIH Contractor Performance System.

7. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) justifies the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining that information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; and (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

8. Disclosure may be made to a private contractor or Federal agency for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. The contractor or Federal agency will be required to maintain Privacy Act safeguards with respect to these records.

9. Disclosure may be made to a grantee or contract institution in connection with performance or administration under the conditions of the particular award or contract.

10. Disclosure may be made to the Department of Justice, or to a court or

other adjudicative body, from this system of records when (a) HHS, or any component thereof; or (b) any HHS officer or employee in his or her official capacity; or (c) any HHS officer or 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 officer or employee; or (d) the United States or any agency thereof where HHS determines that the proceeding is likely to affect HHS or any of its components, is a party to proceeding or has any interest in the proceeding, and HHS determines that the records are relevant and necessary to the proceeding and would help in the effective representation of the governmental party.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored by name, application, grant or contract ID number, and contractor tax ID number.

RETRIEVABILITY:

Records are retrieved by name, application, grant or contract ID number, and contractor tax ID number.

SAFEGUARDS:

1. *Authorized Users:* Employees who maintain records in this system are instructed to grant regular access only to NIH extramural and advisory committee staff, NIH contract management staff, and Federal acquisition personnel. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the System manager.

2. *Physical Safeguards:* Physical access to Office of Extramural Research (OER) work areas is restricted to OER employees. Physical access to the Office of Acquisition and Policy (OAMP) work areas is restricted to OAMP employees. Physical access to Office of Federal Advisory Committee Policy (OFACP) work areas is restricted to OFACP employees. Access to the contractor performance files is restricted through the use of secure socket layer encryption and through an IBM password protection system. Only authorized government contracting personnel are permitted access. Access is monitored and controlled by OAMP.

3. *Procedural Safeguards:* Access to source data files is strictly controlled by files staff. Records may be removed from files only at the request of the System manager or other authorized employee. Access to computer files is controlled by the use of registered accounts, registered initials, keywords, and similar limited access systems.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

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'' (HHS Records Management Manual, Appendix B–361), item 4000–A–2, which allows records to be destroyed when no longer needed for administrative purposes. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

For Extramural Awards: Director, Extramural Information Systems, Division of Grants Compliance and Oversight in the Office of Policy for Extramural Research Administration (OPERA), Office of Extramural Research, Office of the Director (OD), Rockledge II, Room 2172, 6701 Rockledge Drive, Bethesda, MD 20892.

For Chartered Federal Advisory Committees of the National Institutes of Health: Director, Office of Federal Advisory Committee Policy, Office of the Director, Building 31, Room 3B–59, 31 Center Drive, Bethesda, MD 20892.

For Contracts: Office of Acquisition Management and Policy, Office of the Director (OD), 6100 Executive Boulevard, Room 6D01, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under Notification Procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Applicant institution, individual, individual's educational institution and references, and participating Federal acquisition personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0041

SYSTEM NAME:

Research Resources: Scientists Requesting Hormone Distribution, HHS/NIH/NIDDK.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institute of Diabetes, and Digestive Kidney Diseases (NIDDK), Democracy Plaza II, Room 693, 6707 Democracy Boulevard, Bethesda, MD 20892–5460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Scientists requesting hormones from the National Institute of Diabetes, and Digestive Kidney Diseases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Justification for request for hormones, including requester's competence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 263, 289a, 289c.

PURPOSE(S):

1. For review of applications requesting hormones and antibodies for research purposes, prior to awarding these substances.

2. To determine if the requester is qualified to receive these materials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to NIDDK Contractors for distribution of various hormones to requesters.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any

employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for PHS who do not technically have the status of agency employees, if they need the records in the performance of their agency functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to staff working for the contractor who need the records for hormone distribution, to NIH staff who supervise the Hormone Distribution Program, and, as approved by the system manager, to scientists and physicians who may have need of the information for research.

2. Physical Safeguards: Records are kept in cabinets in offices which are locked during off-duty hours and which have alarms.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Files may be obtained only at the request of the system manager or other authorized employee.

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'' (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Hormone Distribution Program, National Institute of Diabetes, Digestive and Kidney Diseases (NIDDK), Democracy Plaza II, Room 693, 6707 Democracy Boulevard, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists write to: Administrative Officer, National Institute of Diabetes, Digestive and Kidney Diseases (NIDDK), Building 31, Room 9A46, 31 Center Drive, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under Notification Procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Data is obtained from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0054

SYSTEM NAME:

Administration: Property Accounting (Card Key System), HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

NIH Computer Center, National Institutes of Health, Building 12A, Room 1011, 12 South Drive, Bethesda, MD 20892.

Office of Research Services, Building 13, Room 215, 13 South Drive, Bethesda, MD 20892–5758.

Facilities Engineering Branch, National Institute of Environmental Health Sciences (NIEHS), 102–01, PO Box 12233, Research Triangle Park, NC 27709.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the National Institutes of Health who are issued card keys.

CATEGORIES OF RECORDS IN THE SYSTEM:

Property management.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. 5901; 5 U.S.C. 7903; 40 U.S.C. 318a; 42 U.S.C. 241.

PURPOSE(S):

Used for card keys issuance and control.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, and on magnetic media.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to officials whose duties require use of the information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Textual records are stored in offices which are locked when not in use.

3. Procedural Safeguards: Computer files are password protected.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

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'' (HHS Records Management Manual, Appendix B–361), item 1300–C–14, which allows records to be destroyed after all listed credentials are accounted for or three months after the return of credentials to the issuing office. Refer to the NIH Manual Chapter for specific instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Management Analyst, Division of Engineering Services, Office of Research Services (ORS), Building 3, Room 112, 3 Center Drive, Bethesda, MD 20892–0307.

Chief, Facilities Engineering Branch, National Institute of Environmental Health Sciences (NIEHS), 102–01, PO Box 12233, Research Triangle Park, NC 27709.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under Notification Procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Data is obtained from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0078

SYSTEM NAME:

Administration: Consultant File, HHS/NIH/NHLBI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Heart, Lung, and Blood Institute (NHLBI), Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

List of consultants available for use in evaluation of National Heart, Lung, and Blood Institute special grants and contracts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and resumes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(d), 281.

PURPOSE(S):

1. To identify and select experts and consultants for program reviews and evaluations.

2. For use in evaluation of NHLBI special grants and contracts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer disk and file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

1. Authorized Users: Data on computer files is accessed by keyword known only to authorized users.

2. Physical Safeguards: Rooms where records are stored are locked when not in use.

3. Procedural Safeguards: During regular business hours, rooms are unlocked but are controlled by on-site personnel.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

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'' (HHS Records Management Manual, Appendix B–361), item 1100–G. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Review Branch, National Heart, Lung, and Blood Institute (NHLBI), Rockledge II, Room 7178, 6701 Rockledge Drive, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact: Privacy Act Coordinator, National Heart, Lung, and Blood Institute (NHLBI), Building 31, Room 5A33, 31 Center Drive, Bethesda, MD 20892–2490.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under also pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under Notification Procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0087

SYSTEM NAME:

Administration: Senior Staff, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institute of Allergy and Infectious Diseases (NIAID), Building 31, Room 7A50, 31 Center Drive, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former key professional employees of the Institute, and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Press releases, curricula vitae, nominations for awards, and photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(d), 289a.

PURPOSE(S):

For background records to provide public announcements on National Institute of Allergy and Infectious Diseases research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized Users:* Employees who maintain records in this system are instructed to grant regular access only to staff whose duties require the use of such information. Authorized users are located in the Office of the Director, NIAID. Other one time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical Safeguards:* Records in this system are stored in file folders which are kept in locked cabinets. The room is locked during off-duty hours.

3. *Procedural Safeguards:* Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee.

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'' (HHS Records Management Manual, Appendix B–361), item 1100–G. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Communications and Public Liaison, National Institute of Allergy and Infectious Diseases (NIAID), Building 31, Room 7A–50, 31 Center Drive, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Privacy Act Coordinator, National Institute of Allergy and Infectious Diseases (NIAID), 6700–B Rockledge Drive, Room 2143, Bethesda, MD 20892. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as record Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the System Manager at the address above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individuals and newspaper clippings.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0099

SYSTEM NAME:

Clinical Research: Patient Medical Records, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Medical Record Department, Clinical Center, Building 10, Room 1N208, 10

Center Drive, Bethesda, MD 20892–1192 and at private organizations under contract. Write to the system manager for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registered Clinical Center patients and some individuals not registered as patients but seen in the Clinical Center for diagnostic tests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical treatment records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 248: ''Research and Investigation,'' and ''Hospitals, Medical Examinations, and Medical Care.''

PURPOSE(S):

1. To provide a continuous history of the treatment afforded individual patients in the Clinical Center.

2. To provide a data base for the clinical research conducted within the hospital.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information may be used to respond to Congressional inquiries for constituents concerning their admission to NIH Clinical Center.

2. Social Work Department may give pertinent information to community agencies to assist patients or their families.

3. Referring physicians receive medical information for continuing patient care after discharge.

4. Information regarding diagnostic problems, or having unusual scientific value may be disclosed to appropriate medical or medical research organizations or consultants in connection with treatment of patients or in order to accomplish the research purposes of this system. For example, tissue specimens may be sent to the Armed Forces Institute of Pathology; X-rays may be sent for the opinion of a radiologist with extensive experience in a particular kind of diagnostic radiology. The recipients are required to maintain Privacy Act safeguards with respect to these records.

5. Records may be disclosed to representatives of the Joint Commission on Accreditation of Hospitals conducting inspections to ensure that the quality of the Clinical Center medical record-keeping meets established standards.

6. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

7. Medical information may be disclosed in identifiable form to tumor registries for maintenance of health statistics, *e.g.*, for use in epidemiologic studies.

8. The Department contemplates that it may contract with a private firm for transcribing, updating, copying, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to comply with the requirements of the Privacy Act with respect to such records.

9. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

10.(a). PHS may inform the sexual and/or needle-sharing partner(s) of a subject individual who is infected with the human immunodeficiency virus (HIV) of their exposure to HIV, under the following circumstances: (1) The information has been obtained in the course of clinical activities at PHS facilities carried out by PHS personnel or contractors; (2) The PHS employee or contractor has made reasonable efforts to counsel and encourage the subject individual to provide the information to the individual's sexual or needle-sharing partner(s); (3) The PHS employee or contractor determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and (4) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices.

(b). PHS may disclose information to State or local public health departments, to assist in the notification of the subject individual's sexual and/or needle-sharing partner(s), or in the verification that the subject individual has notified such sexual or needle-sharing partner(s).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and/or on microfiche, and on computer tapes.

RETRIEVABILITY:

Records are retrieved by unit number and patient name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized Users:* Employees maintaining records in this system are instructed to grant regular access only to physicians and dentists and other health care professionals officially participating in patient care, to contractors, or to NIH researchers specifically authorized by the system manager.

2. *Physical Safeguards:* All record facilities are locked when system personnel are not present.

3. *Procedural Safeguards:* Access to files is strictly controlled by the system manager. Records may be removed only by system personnel following receipt of a request signed by an authorized user. Access to computerized records is controlled by the use of security codes known only to the authorized user. Codes are user- and function-specific.

Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records in this system are instructed to make no disclosure of the records except as authorized by the System Manager.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

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'' (HHS Records Management Manual, Appendix B–361), item 3000–E–22, which allows records to be kept until no longer needed for scientific reference. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Medical Record Department, Clinical Center (CC), Building 10, Room 1N208, 10 Center Drive, Bethesda, MD 20892–1192.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the above address. The requester must provide tangible proof of identity, such as a driver's license. If no identification papers are available, the requester must verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. The representative may be a physician, or other health professional, or other responsible individual. The subject individual will be granted direct access unless it is determined that such access is likely to have an adverse effect on him or her. In that case, the medical/dental record will be sent to the designated representative. The individual will be informed in writing if the record is sent to the representative.

A parent or guardian who requests notification of or access to a child's/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child/incompetent person as well as his/her own identity.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably identify the specific reports and related dates pertaining to the information to be released. There may be a fee for reproducing more than 20 pages of material. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the System Manager and reasonably identify the record and specify the information to be contested, and state the corrective action sought and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Referring physicians, other medical facilities (with patient's consent), patients, relatives of patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0105

SYSTEM NAME:

Administration: Health Records of Employees, Visiting Scientists, Fellows, and Others who Receive Medical Care Through the Employee Health Unit, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Main Employee Health Unit, Occupational Medical Service, Building 10, 6th Floor Clinic, 10 Center Drive, Bethesda, MD 20892.

Auxiliary Employee Health Unit, Occupational Medical Service, Building 13, Room G904, 13 South Drive, Bethesda, MD 20892.

Employee Health Unit, Rocky Mountain Laboratories, Hamilton, Montana 59840.

Employee Assistance Program, Occupational Medical Service, Building 31, Room B2B57, 31 Center Drive, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, fellows, visiting scientists, relatives of inpatients, visitors, and others who receive medical care through the Employee Health Unit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901.

PURPOSE(S):

1. For medical treatment.

2. Upon researcher request with individual's written permission, release of record for research purposes to medical personnel.

3. Upon request by HHS personnel offices for determination of fitness for duty, and for disability retirement and other separation actions.

4. For monitoring personnel to assure that safety standards are maintained.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to Federal, State, and local government agencies for adjudication of benefits under workman's compensation, and for disability retirement and other separation actions.

2. To district office of OPEC, Department of Labor with copies to the U.S. Office of Personnel Management for processing of disability retirement and other separation actions.

3. Upon non-HHS agency request, for examination to determine fitness for duty with copies to requesting agency and to the U.S. Office of Personnel Management.

4. Disclosure may be made to a congressional office from the record of an individual in response to any inquiry from the congressional office made at the request of the individual.

5. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) 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 (d) 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 litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and social security number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Access is limited to authorized personnel (system manager and staff; Occupational Medicine Service staff; and personnel and administrative officers with need for information for fitness for duty, disability, and other similar determinations).

2. Physical Safeguards: Files are maintained in locked cabinets.

3. Procedural Safeguards: Access to files is strictly controlled by authorized staff.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule, Manual Chapter 1743 (HHS Records Management Manual, Appendix B–361), item 2300–792–3.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Division of Safety, Office of Research Services (ORS), Building 31, Room 1C02, 31 Center Drive, Bethesda, MD 20892.

Chief, Rocky Mountain Operations Branch, Rocky Mountain Laboratories, Hamilton, Montana 59840.

NOTIFICATION PROCEDURE:

Contact System Manager at appropriate treatment location listed above, to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requester should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under Notification Procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Records contain data resulting from clinical and preventative services provided at treatment location, and data received from individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0106

SYSTEM NAME:

Administration: Office of the NIH Director and Institute/Center Correspondence Records, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Executive Secretariat, Office of the Director (OD), Building 1, Room B1–55, 1 Center Drive, Bethesda, MD 20892–0122.

Machine Room, Executive Secretariat, Office of the Director (OD), Building 31, Room 3B33, 31 Center Drive, Bethesda, MD 20892.

Office of Legislative Policy and Analysis, Office of the Director (OD), Building 1, Room 244, 1 Center Drive, Bethesda, MD 20892.

Office of Science Education, Office of Science Policy, Office of the Director (OD), Rockledge I, Room 724, 6705 Rockledge Drive, Bethesda, MD 20892.

Institute/Center staff offices that retain correspondence files and computer servers which store document images.

Write to the appropriate System Manager listed in Appendix I for a list of current locations and for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have contacted the NIH Director or his/her subordinates, or have been contacted in writing by one of these officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and other supporting documents; mailing lists.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101.

PURPOSE(S):

1. To control, address, and track all correspondence documents addressed or directed to the NIH Director or his/her subordinates, as well as documents/supporting documents initiated by them, in order to assure timely and appropriate attention.

2. Incoming correspondence and supporting documentation is forwarded to other HHS components when a response from them is warranted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made from this system of records by the Department of Health and Human Services (HHS) to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) 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 (d) 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 litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored by computer index, optical image and in file folders.

RETRIEVABILITY:

Records are retrieved by name, document number, date, and subject.

SAFEGUARDS:

1. *Authorized Users:* Access to textual records is limited to authorized personnel (system managers and staff).

2. *Physical Safeguards:* Physical access to records and to computer servers containing records is restricted to authorized personnel.

3. *Procedural Safeguards:* Access to textual records is strictly controlled by system managers and staff. Records may be removed from files only at the request of system managers or other authorized employees. Computer files are password protected.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

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'' (HHS Records Management Manual, Appendix B–361), item 1700–C, which allows records to be kept for a maximum period of ten years. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

System Managers are listed in Appendix I; each maintains full responsibility for their specific correspondence system.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate System Manager as listed in Appendix I.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under Notification Procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Records are derived from incoming and outgoing correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System Managers

Information Systems Manager, Executive Secretariat, Office of the Director (OD), Building 1, Room B146, 1 Center Drive, Bethesda, MD 20892–0122.

Acting Associate Director, Office of Legislative Policy and Analysis, Office of the Director (OD), Building 1, Room 244, 1 Center Drive, Bethesda, MD 20892–0160.

Privacy Act Systems Manager, Office of Science Education, Office of Science Policy, Office of the Director (OD), Rockledge I, Room 729, 6705 Rockledge Drive, Bethesda, MD 20892–7984.

Secretary to the Director, National Cancer Institute (NCI), Building 31, Room 11A48, 31 Center Drive, Bethesda, MD 20892–2590.

Secretary to the Director, Office of the Director, National Heart, Lung, and Blood Institute (NHLBI), Building 31, Room 5A52, 31 Center Drive, Bethesda, MD 20892–2486.

Director, Office of Communication and Public Liaison, National Institute of Diabetes and Digestive and Kidney (NIDDK), Building 31, Room 9A04, 31 Center Drive, Bethesda, MD 20892–2560.

Executive Secretariat, National Institute of Environmental Health Sciences (NIEHS), PO Box 12233, South Campus, Building 2, Room B201, Research Triangle Park, NC 27709–B201.

Secretary to the Director, National Eye Institute (NEI), Building 31, Room 6A03, 31 Center Drive, Bethesda, MD 20892–2510.

Executive Assistant to the Director, National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), Building 31, Room 4C32, 31 Center Drive, Bethesda, MD 20892–2350.

Chief, Administrative Management Branch, National Institute on Deafness and Other Communication Disorders (NIDCD), Building 31, Room 3C02, 31 Center Drive, Bethesda, MD 20892–2320.

Secretary to the Director, National Institute of General Medical Sciences (NIGMS), Natcher Building, Room 2AN12D, 45 Center Drive, Bethesda, MD 20892–6200.

Secretary to the Director, Office of the Director, National Library of Medicine (NLM), Building 38, Room 2E17, 8600 Rockville Pike, Bethesda, MD 20894–6075.

Secretary to the Director, Fogarty International Center (FIC), Building 31, Room B2C02, 31 Center Drive, Bethesda, MD 20892–2220.

Special Assistant for Liaison Activities, Office of AIDS Research, Office of the Director (OD), Building 2, Room 4E14, 2 Center Drive, Bethesda, MD 20892.

Executive Secretariat, National Institute on Drug Abuse (NIDA), Neuroscience Center, 6001 Executive Boulevard, Room 5101, Bethesda, MD 20892–9585.

Executive Secretariat, National Institute on Alcohol Abuse and Alcoholism (NIAAA), Willco Building, Room 400, 6000 Executive Boulevard, Bethesda, MD 20892–7003.

Executive Secretariat, National Institute of Mental Health (NIMH), Neuroscience Center, 6001 Executive Boulevard, Room 8208, Bethesda, MD 20892–9667.

Director, Office of Communications, National Center for Complementary and Alternative Medicine (NCCAM), Democracy Plaza II, Room 401, 6707 Democracy Boulevard, Bethesda, MD 20892–5475.

Privacy Act Coordinator, National Institute of Biomedical Imaging and Bioengineering (NIBIB), Building 31, Room 1B37, 31 Center Drive, Bethesda, MD 20892–2077.

Privacy Act Coordinator, National Center on Minority Health and Health Disparities (NCMHD), Democracy Plaza II, Room 800, 6707 Democracy Boulevard, Bethesda, MD 20892–5465.

09–25–0108

SYSTEM NAME:

Personnel: Guest Researchers, Special Volunteers, and Scientists Emeriti, HHS/NIH/OHRM.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system is located in the Personnel/Administrative Offices of individual Institutes/Centers of the National Institutes of Health. These records are interspersed with staff records and filed alphabetically.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals using NIH facilities who are not NIH employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information including name, address, date and place of birth, education, employment, purpose for which NIH facilities are desired, outside sponsor, and NIH sponsor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(a)(2), 42 U.S.C. 282(b)(10), and 42 U.S.C. 284(b)(1)(k).

PURPOSE(S):

To determine eligibility to use NIH facilities, to document the individual's presence at NIH, and to record that the individual is not an employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to U.S. Office of Personnel Management for program evaluation purposes; to General Accounting Office for fund disbursement determinations.

2. Disclosure may be made to institutions providing financial support.

3. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the request of that individual.

4. Disclosure may be made to the Department of Justice or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) 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 (d) 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 litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

5. Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for PHS who do not technically have the status of agency employees, if they need the records in the performance of their agency functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and computer programs.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

For each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. *Authorized Users:* Access is granted only to personnel staff, administrative office staff and management officials directly involved in the administration of the Guest Researcher, Special Volunteer and Scientist Emeriti programs.

2. *Physical Safeguards:* Record facilities are locked when system personnel are not present.

3. *Procedural Safeguards:* Access to files is strictly controlled by system personnel. Records may be removed from the file only with the approval of the system manager or other authorized employees.

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'' (HHS Records Management Manual, Appendix B–361), item 2300–320–3(a), which allows records to be destroyed after a maximum period of two years after the individual completes work at NIH. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel/Principal or Senior Administrative Officers of National Institutes of Health Institutes/Centers.

NOTIFICATION PROCEDURE:

To determine if a record exists and where it is located, contact the Privacy Act Coordinator, Office of Human Resource Management, Office of the Director (OD), Building 31, Room 1C39, 31 Center Drive, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Contact the Personnel Officer or Administrative Officer in whose office the record is located and provide verification of identity as described under notification procedure above. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under Notification Procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual, NIH sponsor, funding institution.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0115

SYSTEM NAME:

Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institute of Allergy and Infectious Diseases (NIAID), 6700–B Rockledge Drive, Room 3134, Bethesda, MD 20892–7630.

McKesson BioServices Corporation, 7501 Standish Place, Rockville, MD 20850.

Write to the System Manager at the address below for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants and Clinical Investigators under National Institute of Allergy and Infectious Diseases (NIAID) Investigational New Drug Applications.

CATEGORIES OF RECORDS IN THE SYSTEM:

Curricula vitae.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a.

PURPOSE(S):

1. To maintain a record of the investigators under Investigational New Drug (IND) applications.

2. To appoint consultants to the NIAID Institutional Review Board (IRB).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) 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 (d) 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 litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is

relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in books.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized Users:* Employees who maintain records in this system are instructed to grant regular access only to NIAID staff whose duties require the use of such information. Authorized users are located in the Office of Clinical Research Affairs, Division of Microbiology and Infectious Diseases, NIAID. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical Safeguards:* Building is locked during off-duty hours.

3. *Procedural safeguards:* Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the System Manager or other authorized employee.

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'' (HHS Records Management Manual, Appendix B–361), item 1100–G. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Clinical Research Affairs, Division of Microbiology and Infectious Diseases, National Institute of Allergy and Infectious Diseases (NIAID), 6700–B Rockledge Drive, Room 3134, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Privacy Act Coordinator, National Institute of Allergy and Infectious Disease (NIAID), 6700–B Rockledge Drive, Room 2143, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under Notification Procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0118

SYSTEM NAME:

Contracts: Professional Services Contractors, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Write to System Manager at the address below for the address of the Federal Records Center where records may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals under contract with the National Cancer Institute.

CATEGORIES OF RECORDS IN THE SYSTEM:

Professional services contracts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(d), 281.

PURPOSE(S):

Used by staff for general administrative purposes to assure compliance with contract program requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

1. *Authorized Users:* Access is limited to authorized personnel (system manager and staff).

2. *Physical Safeguards:* Records are maintained in offices which are locked when not in use

3. *Procedural Safeguards:* Access to files is strictly controlled by system manager and staff.

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'' (HHS Records Management Manual, Appendix B–361), item 2600–A–4, which allows records to be destroyed after a maximum period of six years and three months after final payment. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

ARC Manager, Division of Cancer Treatment and Diagnosis (DCTD), National Cancer Institute (NCI),

Building 31, Room 3A44, 31 Center Drive, Bethesda, MD 20892.

ARC Manager, Office of the Director (OD), National Cancer Institute (NCI), Building 31, Room 11A35, 31 Center Drive, Bethesda, MD 20892.

ARC Manager, Executive Plaza (EP), National Cancer Institute (NCI), Building 6116, Room 220, 6116 Executive Boulevard, Bethesda, MD 20892.

ARC Manager, Building 6116, National Cancer Institute (NCI), 6116 Executive Boulevard, Room 200, Bethesda, MD 20892.

ARC Manager, Division of Cancer Prevention (DCP), National Cancer Institute (NCI), Executive Plaza North, Room 3060, 6130 Executive Boulevard, Bethesda, MD 20892.

ARC Manager, Division of Cancer Biology (DCB), National Cancer Institute (NCI), Executive Plaza North, Room 500, 6130 Executive Boulevard, Bethesda, MD 20892.

ARC Manager, Division of Cancer Control and Population Sciences (DCCPS), National Cancer Institute (NCI), Executive Plaza North, Room 3038, 6130 Executive Boulevard, Bethesda, MD 20892.

ARC Manager, Building 41, National Cancer Institute (NCI), Building 41, Room A101, 41 Medlars Drive, Bethesda, MD 20892.

ARC Manager, Building 37, National Cancer Institute (NCI), Building 37, Room 5A15, 37 Convent Drive, Bethesda, MD 20892.

ARC Manager, Frederick Cancer Research and Development Center (FCRDC), National Cancer Institute (NCI), Building 578, Room 23, Frederick, MD 21702.

ARC Manager, Division of Cancer Epidemiology and Genetics (DCEG), National Cancer Institute (NCI), Executive Plaza South, Room 8086, 6120 Executive Boulevard, Bethesda, MD 20892.

ARC Manager, Center for Cancer Research (CCR), National Cancer Institute (NCI), Building 31, Room 3A19, 31 Center Drive, Bethesda, MD 20892.

ARC Manager, Building 10A, National Cancer Institute (NCI), Building 10, Room 12N210, 10 Center Drive, Bethesda, MD 20892.

ARC Manager, Building 10B, National Cancer Institute (NCI), Building 10, Room 12N210, 10 Center Drive, Bethesda, MD 20892.

ARC Manager, Information Technology (IT), National Cancer Institute (NCI), Building 6116, Room 503, 6116 Executive Boulevard, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the appropriate System Manager listed above to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under Notification Procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individuals in the system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0121

SYSTEM NAME:

International Activities: Senior International Fellowships Program, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of International Training and Research, Fogarty International Center (FIC), Building 31, Room B2C39, 31 Center Drive, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for Senior International Fellowships.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and associated records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 242e.

PURPOSE(S):

For award and administration of fellowships to outstanding faculty members in mid-career from U.S biomedical research and educational institutions for study abroad.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Each fellow's home institution receives a notice of award and funding for the fellowship.

2. Applications are made available to authorized employees and agents of the U.S., including the General Accounting Office for purposes of investigations, inspections and audits, and in appropriate cases, to the Department of Justice for proper action under civil and criminal laws.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) 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 (d) 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 litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and computer disks.

RETRIEVABILITY:

Name and fellowship number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as

appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, procedural safeguards such as the following:

1. *Authorized Users:* Employees who maintain records in this system are instructed to grant regular access only to Fogarty International Center (FIC) program staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical Safeguards:* The records are stored in locked file cabinets and offices are locked during off-duty hours.

3. *Procedural Safeguards:* Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employees. For computerized records access is controlled by the use of security codes known to authorized users and access codes are changed periodically. The computer system maintains an audit record of all requests for access.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

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'' (HHS Records Management Manual, Appendix B–361), item 2300–320–7, which allows records to be destroyed after a maximum period of six years after the close of a case. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of International Training and Research, Fogarty International Center (FIC), Building 31, Room B2C39, 31 Center Drive, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Requests for notification of or access to records should be addressed to the System Manager, listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under Notification Procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information obtained from applicants and persons supplying recommendations through the Center for Scientific Review.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0124

SYSTEM NAME:

Administration: Pharmacology Research Associates, HHS/NIH/NIGMS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Director, PRAT Program, Pharmacological Sciences, National Institute of General Medical Sciences (NIGMS), Natcher Building, Room 2AS43D, 45 Center Drive, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for positions as Pharmacology Research Associates with the National Institute of General Medical Sciences (NIGMS) and current and former Pharmacology Research Associates.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual application forms, addresses, telephone numbers, lists of awards received, research keywords, preceptor and institute during time of fellowship for former fellows, academic transcripts, reprints and references, curricula vitae and salary adjustment memorandum for fellows.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 209.

PURPOSE(S):

For review, award and administration of the Pharmacology Research Associate Program (PRAT).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) 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 (d) 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 litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

By name of applicant.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized Users:* Employees who maintain the system are instructed to grant access only to authorized personnel (System manager and staff assigned to the program).

2. *Physical Safeguards:* The records are maintained in locked file cabinets

when not in use and system location is locked during non-working hours.

3. *Procedural Safeguards:* Access to files is strictly controlled by responsible individuals who have been instructed in the Privacy Act requirements. Records are returned to the locked cabinets when not in use.

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'' (HHS Records Management Manual, Appendix B–361), item 2300–320–2(a). Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Director, PRAT Program, Pharmacological Sciences, National Institute of General Medical Sciences (NIGMS), Natcher Building, Room 2AS49K, 45 Center Drive, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to System Manager and provide the following information: applicant's name and date of application. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under Notification Procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information obtained from applicants, university registrars, and persons supplying recommendations through the PRAT Program. Salary adjustment memos from preceptors. Information on former fellows obtained from former fellows.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0140

SYSTEM NAME:

International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC/ORS/DIRS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Center for Information Technology (CIT), Building 12A, Room 3061, 12 South Drive, Bethesda, Maryland 20892.

Ancillary records are located in the Office of the Associate Director for Intramural Affairs, laboratories, administrative and personnel offices where participants are assigned. Write to System manager at the address below for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Health scientists at all levels of their pre- and postdoctoral or equivalent research careers who are invited to the National Institutes of Health to conduct research related to their doctoral studies, for further postdoctoral training, or to conduct research in their biomedical specialties under the auspices of FIC's administration of International Activities. Most of these scientists are foreign, however some may be resident aliens .

Individuals in these categories include the following: Visiting Scientists (i.e., Title 42 employees) and Foreign Special Experts (also employees) and Visiting Fellows, Guest Researchers, Exchange Scientists, International Research Fellows, Fogarty Scholars, and Special Volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

History of fellowship, employment and/or stay at NIH; education, previous institution of affiliation, immigration data, and references. For payroll purposes, social security numbers are requested of all applicants accepted into the program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 242l and Section 307 of the Public Health Service Act.

PURPOSE(S):

To document the individual's presence at the NIH, to record immigration history of the individual in order to verify continued eligibility in existing programs, and to meet requirements in the code of Federal Regulations (8 CFR, ''Aliens and Nationality,'' and 22 CFR, ''Foreign Relations'').

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information is made available to authorized employees and agents of the U.S. Government including, but not limited to, the General Accounting Office, the Internal Revenue Service, the FBI and Immigration and Naturalization Service, Department of Justice, and the Department of State for purposes of investigations, inspections and audits.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

3. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) 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 (d) 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 litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, computer hard disks and tapes, and computer diskettes.

RETRIEVABILITY:

By name, country of citizenship, country of birth, gender, fellowship case number, visa and immigration status, program category, NIH institute and lab, sponsor, degree attained, stipend or salary level, dates of stay at NIH, termination date, work address and telephone number, and home address.

SAFEGUARDS:

A variety of safeguards is implemented for the various sets of records included under this system according to the sensitivity of the data they contain.

1. *Authorized Users:* NIH administrative and personnel staff screened by FIC staff to access information on a need-to-know basis. Only FIC staff are authorized to add, change, or delete data. Access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical Safeguards:* The records are maintained in file cabinets in offices that are locked during off-duty hours.

3. *Procedural Safeguards:* Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employees. For computerized records, access is controlled by the use of security codes known only to authorized users; access codes are changed periodically. The computer system maintains an audit record of all requests for access.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

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'' (HHS Records Management Manual, Appendix B–361), item 2300–320, which allows records to be destroyed after a maximum period of six years after the close of a case. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS

Director, Division of Intramural Research Services, Office of Research Services (ORS), Building 31, Room 3B65, 31 Center Drive, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official listed under Notification Procedure above, and reasonably identify the record, and specify the information to be contested, and state the corrective action sought and the reasons for the correction. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individuals and other Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0156

SYSTEM NAME:

Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the Public Health Service, HHS/PHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is an umbrella system comprising separate sets of records located either in the organizations responsible for conducting evaluations or at the sites of programs or activities under evaluation. Locations include Public Health Service (PHS) facilities, or facilities of contractors of the PHS. Write to the appropriate System manager below for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who provide information or opinions that are useful in evaluating programs or activities of the PHS other persons who have participated in or benefitted from PHS programs or activities; or other persons included in evaluation studies for purposes of comparison. Such individuals may include (1) participants in research studies; (2) applicants for and recipients of grants, fellowships, traineeships or other awards; (3) employees, experts and consultants; (4) members of advisory committees; (5) other researchers, health care professionals, or individuals who have or are at risk of developing diseases or conditions studied by PHS; (6) persons who provide feedback about the value or usefulness of information they receive about PHS programs, activities or research results; (7) persons who have received Doctorate level degrees from U.S. institutions; (8) persons who have worked or studied at U.S. institutions that receive(d) institutional support from PHS.

CATEGORIES OF RECORDS IN THE SYSTEM:

This umbrella system of records covers a varying number of separate sets of records used in different evaluation studies. The categories of records in each set depend on the type of program being evaluated and the specific purpose of the evaluation. In general, the records contain two types of information: (1) Information identifying subject individuals, and (2) information which enables PHS to evaluate its programs and services.

1. Identifying information usually consists of a name and address, but it might also include a patient identification number, grant number, social security number, or other identifying number as appropriate to the particular group included in an evaluation study.

2. Information used for evaluation varies according to the program evaluated. Categories of evaluative information include personal data and medical data on participants in clinical and research programs; personal data, publications, professional achievements and career history of researchers; and opinions and other information received directly from individuals in evaluation surveys and studies of PHS programs.

The system does not include any master list, index or other central means of identifying all individuals whose records are included in the various sets of records covered by the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system comes from the authorities regarding the establishment of the National Institutes of Health, its general authority to conduct and fund research and to provide training assistance, and its general authority to maintain records in connection with these and its other functions (42 U.S.C. 203, 241, 289l–1 and 44 U.S.C. 3101), and Section 301 and 493 of the Public Health Service Act.

PURPOSE(S):

This system supports evaluation of the policies, programs, organization, methods, materials, activities or services used by PHS in fulfilling its legislated mandate for (1) conduct and support of biomedical research into the causes, prevention and cure of diseases; (2) support for training of research investigators; (3) communication of biomedical information.

This system is not used to make any determination affecting the rights, benefits or privileges of any individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors and collaborating researchers, organizations, and State and local officials for the purpose of conducting evaluation studies or collecting, aggregating, processing or analyzing records used in evaluation studies. The recipients are required to protect the confidentiality of such records.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. The Department may disclose information from this system of records to the Department of Justice, to court or other tribunal, or to another party before such tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) 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 (d) the United States or any agency thereof where HHS or any of its components, is a party to litigation or has an interest in such 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 governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, bound notebooks, or computer-accessible media (*e.g.*, magnetic tapes, disks, cartridges, CD–ROMs, etc.).

RETRIEVABILITY:

Information is retrieved by name and/or participant identification number within each evaluation study. There is no central collection of records in this system, and no central means of identifying individuals whose records are included in the separate sets of records that are maintained for particular evaluation studies.

SAFEGUARDS:

A variety of safeguards are implemented for the various sets of records in this system according to the sensitivity of the data each set contains. Information already in the public domain, such as titles and dates of publications, is not restricted. However, sensitive information, such as personal or medical history or individually identified opinions, is protected according to its level of sensitivity. Records derived from other systems of records will be safeguarded at a level at least as stringent as that required in the original systems. Minimal safeguards for the protection of information which is not available to the general public include the following:

1. *Authorized Users:* Regular access to information in a given set of records is limited to PHS or to contractor employees who are conducting, reviewing or contributing to a specific evaluation study. Other access is granted only on a case-by-case basis, consistent with the restrictions required by the Privacy Act (*e.g.*, when disclosure is required by the Freedom of Information Act), as authorized by the system manager or designated responsible official.

2. *Physical Safeguards:* Records are stored in closed or locked containers, in areas which are not accessible to unauthorized users, and in facilities which are locked when not in use. Records collected in each evaluation project are maintained separately from those of other projects. Sensitive records are not left exposed to unauthorized persons at any time. Sensitive data in machine-readable form may be encrypted.

3. *Procedural Safeguards:* Access to records is controlled by responsible employees and is granted only to authorized individuals whose identities are properly verified. Data stored in mainframe computers is accessed only through the use of keywords known only to authorized personnel. When personal computers are used, magnetic media (*e.g.* diskettes, CD-ROMs, etc.) are protected as under Physical Safeguards. When data is stored within a personal computer (*i.e.*, on a ''hard disk''), the machine itself is treated as though it were a record, or records, under Physical Safeguards. Contracts for operation of this system of records require protection of the records in accordance with these safeguards; PHS project and contracting officers monitor contractor compliance.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

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'' (HHS Records Management Manual, Appendix B–361), item 1100–C–2. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

See Appendix I.

Policy coordination for this system is provided by: Acting Director, Office of Reports and Analysis, Office of Extramural Research, Office of the Director (OD), Building 1, Room 252, 1 Center Drive, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the official of the organization responsible for the evaluation, as listed in Appendix II. If you are not certain which component of PHS was responsible for the evaluation study, or if you believe there are records about you in several components of PHS, write to: NIH Privacy Act Officer, 6011 Executive Boulevard, Room 601, Bethesda, MD 20892–7669.

Requesters must provide the following information:

1. Full name, and name(s) used while studying or employed;

2. Name and location of the evaluation study or other PHS program in which the requester participated or the institution at which the requester was a student or employee, if applicable;

3. Approximate dates of participation, matriculation or employment, if applicable.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, other health professional, or other responsible individual, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under Notification Procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants; from systems of records 09–25–0036, ''Extramural Awards and Chartered Advisory Committees: IMPAC (Grants/Contract Information/Cooperative Agreement Information/Chartered Advisory Committee Information), HHS/NIH/OER and HHS/NIH/CMO;'' 09–25–0112, ''Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD;'' NSF–6, ''Doctorate Record File,'' NSF–43, ''Doctorate Work History File'' (previously entitled NSF–43, ''Roster and Survey of Doctorate Holders in The United States'' and other records maintained by the operating programs of NIH; the National Academy of Sciences, professional associations such as the AAMC and ADA, and other contractors; grantees or collaborating researchers; or publicly available sources such as bibliographies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System Managers

Office of Reports and Analysis, Office of Extramural Research, Office of the Director (OD), Rockledge II, Room 6212, 6701 Rockledge Drive, Bethesda, MD 20892.

Director, Office of Human Resource Management, Office of the Director (OD), Building 1, Room B160, 1 Center Drive, Bethesda, MD 20892.

Program Analyst, Office of Science and Technology, PSR, National Heart, Lung and Blood Institute (NHLBI), Building 31, Room 5A03, 31 Center Drive, Bethesda, MD 20892–2482.

Associate Director for Health Information Programs Development, National Library of Medicine (NLM), Building 38, Room 2S20, 8600 Rockville Pike, Bethesda, MD 20894.

Associate Director for Science Policy and Legislation, National Eye Institute (NEI), Building 31, Room 6A25, 31 Center Drive, Bethesda, MD 20892–2510.

Public Health Educator, Office of Cancer Communications, National Cancer Institute (NCI), Building 31, Room 10A03, 31 Center Drive, Bethesda, MD 20892.

Chief, Office of Planning, Analysis, National Institute on Aging (NIA), Building 31, Room 5C05, 31 Center Drive, Bethesda, MD 20892.

Associate Director for Science Policy, Analysis, and Communication, National Institute of Child Health and Human Development (NICHD), Building 31, Room 2A18, 31 Center Drive, Bethesda, MD 20892.

Chief, Science Policy and Planning Branch, National Institute on Deafness and Other Communication Disorders (NIDCD), Building 31, Room 3C27, 31 Center Drive, Bethesda, MD 20892–2320.

Evaluation Officer, Office of Science Policy and Analysis, National Institute of Dental and Craniofacial Research (NIDCR), Building 31, Room 5B55, 31 Center Drive, Bethesda, MD 20892–2190.

Program Analyst, Office of Program Planning and Evaluation, National Institute of Environmental Health Sciences (NIEHS), PO Box 12233, Research Triangle Park, NC 27709.

Chief, Office of Program Analysis and Evaluation, National Institute of General Medical Sciences (NIGMS), Natcher Building, Room 2AS55F, 45 Center Drive, Bethesda, MD 20892.

Director, Division of Advanced Studies and Policy Analyses, Fogarty International Center (FIC), Building 16, Room 202, 16 Center Drive, Bethesda, MD 20892–6705.

Information Officer, Center for Scientific Review (CSR), Rockledge II, Room 6160, 6701 Rockledge Drive, Bethesda, MD 20892.

Director, Office of Science Policy and Public Liaison, National Center for Research Resources (NCRR), Rockledge II, Room 5046, 6701 Rockledge Drive, Bethesda, MD 20892.

Chief, Office of Planning, Analysis and Evaluation, National Institute of Nursing Research (NINR), Building 31, Room 5B09, 31 Center Drive, Bethesda, MD 20892.

Policy Analyst, Division of Policy and Education, Office of Research Integrity, U.S. Public Health Service, 5515 Security Lane, Suite 700, Rockwall II Building, Rockville, MD 20852.

Contract Officer, National Institute of Mental Health (NIMH), 6001 Executive Boulevard, Room 6107, Bethesda, MD 20892.

Program Evaluation Team, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism (NIAAA), Willco Building, Room 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003.

Evaluation Officer, Office of Science Policy and Operations, National Center for Complementary and Alternative Medicine (NCCAM), Democracy Plaza II, Room 401, 6707 Democracy Boulevard, Bethesda, MD 20892–5475.

Privacy Act Coordinator, National Institute of Biomedical Imaging and Bioengineering (NIBIB), Building 31, Room 1B37, 31 Center Drive, Bethesda, MD 20892–2077.

Privacy Act Coordinator, National Center on Minority Health and Health Disparities (NCMHD), Democracy Plaza II, Room 800, 6707 Democracy Boulevard, Bethesda, MD 20892–5465.

Appendix II: Notification and Access Officials

Acting Director, Office of Reports and Analysis, Office of Extramural Research, Office of the Director (OD), Building 1, Room 252, 1 Center Drive, Bethesda, MD 20892.

Director, Office of Human Resources Management, Office of the Director (OD), Building 1, Room B160, 1 Center Drive, Bethesda, MD 20892.

Privacy Act Coordinator, National Heart, Lung, and Blood Institute (NHLBI), Building 31, Room 5A33, 31 Center Drive, Bethesda, MD 20892.

Assistant Director for Planning and Evaluation, National Library of Medicine (NLM), Building 38, Room 2S18, 8600 Rockville Pike, Bethesda, MD 20894.

Program Evaluation Team, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism (NIAAA), Willco Building, Room 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003.

Contract Officer, National Institute of Mental Health (NIMH), 6001 Executive Boulevard, Room 6107, Bethesda, MD 20892.

Executive Officer, National Eye Institute (NEI), Building 31, Room 6A03, 31 Center Drive, Bethesda, MD 20892–2510.

Director, Division of Advanced Studies and Policy Analysis, Fogarty International Center (FIC), Building 16, Room 202, 16 Center Drive, Bethesda, MD 20892–6705.

Information Officer, Center for Scientific Review (CSR), Rockledge II, Room 6160, 6701 Rockledge Drive, Bethesda, MD 20892.

Director, Office of Science Policy and Public Liaison, National Center for Research Resources (NCRR), Rockledge II, Room 5046, 6701 Rockledge Drive, Bethesda, MD 20892.

Privacy Act Coordinator, National Cancer Institute (NCI), Building 31, Room 10A30, 31 Center Drive, Bethesda, MD 20892.

09–25–0158

SYSTEM NAME:

Administration: Records of Applicants and Awardees of the NIH Intramural Research Training Awards Program, HHS/NIH/OD/OIR/OE.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system is located in each of the intramural offices and laboratories where the Intramural Research Training Awards (IRTA) Fellow is located and assigned, including the respective Scientific Director's office, the administrative and personnel offices, and in Personnel branches responsible for administering the IRTA Program, and the Office of Education, Office of Intramural Research, Office of the Director, Building 2, Room 2E04, 2 Center Drive, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for IRTA Fellowships, current IRTA Fellows, and former IRTA Fellows.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to education and training, employment history, scientific publications; research goals; letters of reference; and personal information such as name, date of birth, social security number, home address and citizenship; and information related to fellowship awards such as stipend levels, training assignments, training expenses and travel allowances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 284(b)(1)(C), 286b–3, and 287c–1 authorizes PHS to make awards for biomedical research and research training.

PURPOSE(S):

Records in this system are used to determine individuals' eligibility and evaluate their qualifications for IRTA Fellowships; to document the basis for management actions relating to Fellowships that are awarded; and to provide data for program evaluation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to the Office of Human Resource Management for evaluation of NIH Personnel programs.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of that individual.

3. Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) 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 (d) 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 litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. Disclosure may be made to a Federal, State or local agency maintaining civil, criminal or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the selection or retention of a fellow.

5. Disclosure may be made to a Federal agency, in response to its request, in connection with hiring or retention of an employee, the issuance of a security clearance, 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 the requesting agency's decision on the matter.

Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for PHS who do not technically have the status of agency employees, if they need the records in the performance of their agency functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, and on magnetic tapes and disks and computer programs.

RETRIEVABILITY:

Records are retrieved by name, social security number, or institute list number.

SAFEGUARDS:

1. *Authorized Users:* Access is granted only to NIH scientists, administrative office staff, personnel staff and financial management staff directly involved in the administration of the IRTA Program.

2. *Physical Safeguards:* File folders are kept in locked drawers or locked rooms when system personnel are not present.

3. *Procedural Safeguards:* Access to file folders is controlled by system personnel. Records may be removed from the files only with the approval of the system manager or other authorized employees. Data stored in the automated system is accessed through the use of keywords known only to authorized personnel.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

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'' (HHS Records Management Manual, Appendix B–361), item 4000–E–3. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel/Principal or Senior Administrative Officers of the National Institutes of Health Institutes/Centers. Contact the individual listed under notification procedure for the name and address of the appropriate System Manager.

NOTIFICATION PROCEDURE:

To determine if a record exists and where it is located, contact: Chief, Staffing Management Branch, Office of Human Resource Management, Building 31, Room 1C31, 31 Center Drive, Bethesda, MD 20892.

The requestor must also verify his or her identity by providing either a

notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under the Notification Procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is untimely, incomplete, irrelevant or inaccurate. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Applicants, persons and institutions supplying references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0160

SYSTEM NAME:

United States Renal Data System (USRDS), HHS/NIH/NIDDK.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at contractor operated coordinating center. Write to the System manager at address below for address of current location. U.S. Renal Data System, Coordinating Center (CC), 914 South 8th Street, Suite D–206, Minneapolis, MN 55404.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons with end-stage renal disease (ESRD), providers of ESRD services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Health and medical record data; fiscal information; patient names, social security number, Centers for Medicare and Medical Services (CMS) beneficiary ID, patient demographic, epidemiologic and survival characteristics; physician provider characteristics; facility provider characteristics.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241a, 289c, as last amended by Pub. L. 100–607, November 4, 1988 under the Health Omnibus Programs Extension of 1988.

PURPOSE(S):

1. To design and implement a consolidated renal disease system that will provide the biostatistical, data management and analytical expertise necessary to characterize the total renal patient population and describe the distribution of patients by sociodemographic variables across treatment modalities.

2. To report on the incidence, prevalence, and mortality rates of renal disease by primary diagnosis.

3. To identify the modalities of treatment best suited to individual patients. To compare the various treatment alternatives to examine the prevention and progression of renal disease by morbidity, mortality, and quality of life criteria.

4. To identify problems and opportunities for more focused investigations of renal research issues currently unaddressed by the consolidated data system.

5. To share data with other PHS agencies and CMS for their use in research analysis and program administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure from the record of an individual may be made to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her official capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) 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 litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

2. Disclosure may be made to a Congressional office from the record of an individual in response to a written inquiry from the Congressional office made at the written request of the individual.

3. Disclosure may be made to the HHS contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications systems containing or supporting records in the system. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) Has secured a written statement attesting to the recipients understanding of, and willingness to abide by these provisions.

Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for PHS who do not technically have the status of agency employees, if they need the records in the performance of their agency functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic medium; selected hard copy backup.

RETRIEVABILITY:

Information will be retrieved by patient identification number such as social security number and CMS beneficiary ID. Individual patient data provided only as noted above. Statistical data provided as noted above and to the general public as part of periodic published reports.

SAFEGUARDS:

A variety of safeguards are implemented for the various sets of records in this system according to the sensitivity of the records:

1. *Authorized Users:* Regular access is limited to National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), CMS and contract personnel who have a need for the data in performance of their duties as determined by the system manager.

2. *Physical Safeguards:* Records are stored in areas where access is restricted to areas where data are maintained and processed; data tapes and hard copy data are stored in locked files in secured areas; terminal access controlled by user ID and keywords; off-site data backups in two locations—a remote area of the same building and a separate building; and fire protection secured by Halon fire extinguisher system and fire alarm system present in the computer room.

3. *Procedural Safeguards:* Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act.

Privacy Act requirements are specifically included in contracts and in agreements with grantees or collaborators participating in research activities supported by this system. HHS project directors, contract officers, and project officers oversee compliance with these requirements.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

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'' (HHS Records Management Manual, Appendix B–361), item 3000–G–3(b), which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Epidemiology Program Director, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), Division of Kidney, Urologic and Hematologic Diseases, Rockledge II, Room 615, 6701 Democracy Boulevard, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address noted above. Provide notarized signature as proof of identity. The request should include as much of the following information as possible: (a) Full name; (b) title of project individual participated in; and (c) approximate dates of participation.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the System Manager at the address specified under notification procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

The majority of health, medical, fiscal and other demographic information on patients and health care providers is from the end stage renal disease program of the Centers for Medicare and Medicaid Services (CMS). Additional data comes from other CMS Medicare patient records, the National Death Index, and other sources of non-Medicare ESRD patient records such as the NIH Continuous Ambulatory Peritoneal Dialysis (CAPD) Registry, the United Network of Organ Sharing (UNOS) transplant patients, the Veteran's Administration, and the Indian Health Service.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0166

SYSTEM NAME:

Administration: Radiation and Occupational Safety and Health Management Information Systems, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Radiation Safety Branch, Division of Safety, Office of Research Services (ORS), Building 21, Room 134, 21 Wilson Drive, Bethesda, MD 20892.

Occupational Safety and Health Branch, Division of Safety, Office of Research Services (ORS), Building 13, Room 3K04, 13 South Drive, Bethesda, Maryland 20892.

Write to appropriate System Manager at the address below for the address of contractor locations, including the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Radiation Safety Branch (RSB): NIH employees using radioactive materials or radiation producing machinery, contractor employees who provide service to the Radiation Safety Branch and any other individuals who could potentially be exposed to radiation or radioactivity as a result of NIH operations and who, therefore, must be monitored in accordance with applicable regulations.

Occupational Safety and Health Branch (OSHB): Individuals (including NIH employees and NIH service contract employees) who use or come into contact with potentially hazardous biological or chemical materials, and participants of occupational safety and health monitoring/surveillance programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee name, title, organizational affiliation, birth date, social security number (optional), work address, work telephone number, name of supervisor, and other necessary employment information; radiation/occupational safety and health training information; medical and technical information pertaining to safety and health related initiatives; research protocols and other related documents used to monitor and track radiation exposure and exposure to potentially hazardous biological or chemical materials; radiation materials usage data; and incident data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, regarding the general powers and duties of the Public Health Service relating to research and investigation; 5 U.S.C. 7902 regarding agency safety programs; and 42 U.S.C. 2201, regarding general duties of the Nuclear Regulatory Commission including the setting of standards to cover the possession and use of nuclear materials in order to protect health.

PURPOSE(S):

1. To provide adequate administrative controls to assure compliance with internal NIH policies, and applicable regulations of the Occupational Safety and Health Administration (OSHA), Department of Labor, and other Federal and/or State agencies which may establish health and safety requirements or standards. Ensure legal compliance with requirements of Nuclear Regulatory Commission to maintain internal and external radiation exposure data.

2. To identify, evaluate and monitor use or contact (including incident follow-up) with: radiation (exposure maintained at lowest levels reasonable); biological and/or chemical (potentially hazardous materials). To monitor, track, and assess the use of personal protective equipment in the work place to ensure availability, effectiveness, and proper maintenance. To address emergent safety and health issues or concerns.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual

2. Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) 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 (d) the United States of any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure may be made to contractors for the purpose of processing or refining the records. Contracted services may include monitoring, testing, sampling, surveying, evaluating, transcription, collation, computer input, and other records processing. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. Disclosure may be made to: (a) Officials of the United States Nuclear Regulatory Commission which, by Federal regulation, licenses, inspects and enforces the regulations governing the use of radioactive materials; and (b) OSHA, which provides oversight to ensure that safe and healthful work conditions are maintained for employees. Disclosure will also be permitted to other Federal and/or State agencies which may establish health and safety requirements or standards.

5. Radiation exposure and/or training and experience history may be transferred to new employer.

6. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file cabinets or in computer databases maintained by the RSB and OSHB. Records may be stored in file folders, binders, magnetic tapes, magnetic disks, optical disks and/or other types of data storage devices.

RETRIEVABILITY:

Records are retrieved by name, social security number, office address, or unique RSB or OSHB assigned identification number.

SAFEGUARDS:

1. *Authorized Users:* Employees who maintain this system are instructed to grant regular access only to RSB/OSHB staff, authorized contractor personnel, U.S. Nuclear Regulatory Commission Inspectors, Radiation Safety Committee Members, Biosafety Committee members, and other appropriate NIH administrative and management personnel with a need to know. Access to information is thus limited to those with a need to know.

2. *Physical Safeguards:* Rooms where records are stored are locked when not in use. During regular business hours, rooms are unlocked but are controlled by on-site personnel. Individually identifiable records are kept in locked file cabinets or rooms under the direct control of the Project Director.

3. *Procedural Safeguards:* Names and other identifying particulars are deleted when data from original records are encoded for analysis. Data stored in computers is accessed through the use of keywords known only to authorized users. All users of personal information in connection with the performance of their jobs (see Authorized Users, above) will protect information from public view and from unauthorized personnel entering an unsupervised office. The computer terminals are in secured areas and keywords needed to access data files will be changed frequently.

4. *Additional RSB Technical Safeguards:* Computerized records are accessible only through a series of code or keyword commands available from and under direct control of the Project Director or his/her delegated representatives. The computer records are secured by a multiple level security system which is capable of controlling access to the individual data field level.

Persons having access to the computer database can be restricted to a confined application which only permits a narrow ''view'' of the data. Data on computer files is accessed by keyword known only to authorized users who are NIH or contractor employees involved in work for the program.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

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'' (HHS Records Management Manual, Appendix B–361): item 1300–B which applies to Division of Safety records. Refer to the NIH Manual Chapter for specific disposition instructions. Radiation exposure records are retained under item 1300–B–10, which does not allow disposal at this time.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief, Information Technology, Radiation Safety Branch, Division of Safety, Office of Research Services (ORS), National Institutes of Health, Building 21, Room 134, 21 Wilson Drive, Bethesda, Maryland 20892.

Chief, Occupational Safety and Health Branch, Division of Safety, Office of Research Services (ORS), Building 13, Room 3K04, 13 South Drive, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate System Manager as listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is whom he or she claims to be. The request should include: (a) Full name, and (b) appropriate dates of participation.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the appropriate System Manager specified above and reasonably identify the record, specify the information to be contested, and state the corrective action sought with supporting documentation. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information is obtained from the subject individual, previous employers and educational institutions, contractors, safety and health monitoring/surveillance records, employee interviews, site visits, or other relevant NIH organizational components.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0167

SYSTEM NAME:

National Institutes of Health (NIH) TRANSHARE Program, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Employee Transportation Services Office, National Institutes of Health, Building 31, Room B3B08, 31 Center Drive, Bethesda, MD 20892.

Recreation and Welfare Association Activities Desk, National Institutes of Health, Building 31, Room B1W30A, 31 Center Drive, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NIH employees who apply for and participate in the NIH TRANSHARE Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, home address, parking hanger permit number, unique computer identification number, NIH TRANSHARE commuter card number, NIH pay plan, grade level, office phone number, building and room, Institute/Center designation, name of supervisor, commute mode to work, and type of fare media used.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 629 of Pub. L. 101–509, ''State or Local Government Programs Encouraging Employee Use of Public Transportation; Federal Agency Participation,'' found at 5 U.S.C. note prec. section 7901.

PURPOSE(S):

1. To manage the NIH TRANSHARE Program, including receipt and processing of employee applications, and coordination of the fare media distribution to employees.

2. To monitor the use of appropriated funds used to support the NIH TRANSHARE Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING

CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) 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 (d) 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 litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. NIH may disclose applicant's name, unique computer identification number, NIH TRANSHARE commuter card number, and type of participant's fare media to be disbursed to cashiers of the Recreation and Welfare Association of the National Institutes of Health, Inc. (R&W Association) who are responsible for distribution of fare media. Cashiers are required to maintain Privacy Act safeguards with respect to such records.

4. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments or utilization review.

5. NIH may disclose statistical reports containing information from this system of records to city, county, State, and Federal Government agencies (including the General Accounting Office).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and computer disks.

RETRIEVABILITY:

Records are retrieved by name and NIH TRANSHARE commuter card number.

SAFEGUARDS:

1. *Authorized Users:* Data on computer files is accessed by keyword known only to authorized users who are ETSO employees and cashiers of the R&W Association who are responsible for implementing the Program. Cashier access will be limited to applicant's name, unique computer identification number, NIH TRANSHARE computer card number, and type of fare media disbursed. Access to information is thus limited to those with a need to know.

2. *Physical Safeguards:* Rooms where records are stored are locked when not in use. During regular business hours, rooms are unlocked but are controlled by on-site personnel.

3. *Procedural and Technical Safeguards:* A password is required to access the terminal, and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised office.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

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'' (HHS Records Management Manual, Appendix B–361), item 1500–A–3. Records are retained for a maximum of two years following the last month of an employee's participation in the NIH TRANSHARE Program. Paper copies are destroyed by shredding. Computer files are destroyed by deleting the record from the file.

SYSTEM MANAGER(S) AND ADDRESS

Traffic Management Specialist, Employee Transportation Service Officer, Division of Security Operations, Office of Research Services (ORS), Building 31, Room B3B08, 31 Center Drive, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be. The request should include: (a) full name, and (b) appropriate dates of participation. The requester must also understand that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Write to the System Manager specified above to attain access to records and provide the same information as is required under the Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the System Manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0168

SYSTEM NAME:

Invention, Patent, and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees, Fellowship Recipients, and Contractors, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Technology Transfer, Office of Intramural Research, Office of the Director (OD), 6011 Executive Boulevard, Room 325, Bethesda, MD 20892.

Office of Financial Management, Office of the Director (OD), Building 31, Room B1B55, 31 Center Drive, Bethesda, Maryland 20892.

Office of Reports and Analysis, Office of Extramural Research, Office of the Director (OD), Building 1, Room 252, 1 Center Drive, Bethesda, MD 20892–2184.

Public Health Service (PHS) Technology Development Coordinators and PHS Contract Attorneys retain files supplemental to the records maintained by the Office of Technology Transfer.

Extramural Inventions and Technology Resources Branch, Office of Policy for Extramural Research Administration, Office of Extramural Research, Office of the Director (OD), Rockledge I, Room 1040, 6705 Rockledge Drive, Bethesda, MD 20892–7980.

Write to the System Manager at the address below for office locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PHS employees, grantees, fellowship recipients and contractors who have reported inventions, applied for patents, have been granted patents, and/or are receiving royalties from patents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inventor name, address, social security number (required if inventor is receiving royalties, otherwise optional), title and description of the invention, Employee Invention Report (EIR) number, Case/Serial Number, prior art related to the invention, evaluation of the commercial potential of the invention, prospective licensees' intended development of the invention, associated patent prosecution and licensing documents and royalty payment information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 U.S.C. 200 and 15 U.S.C. 3710 provide authority to maintain the records; 37 CFR Part 401 ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements;'' 37 CFR Part 404 ''Licensing of Government Owned Inventions;'' and 45 CFR Part 7 ''Employee Inventions.''

PURPOSE(S):

Records in this system are used to: (1) Obtain patent protection of inventions submitted by PHS employees; (2) monitor the development of inventions made by grantees, fellowship recipients and contractors and protect the government rights to patents made with NIH support; (3) grant licenses to patents obtained through the invention reports; and (4) provide royalty payments to PHS inventors, non-government contractors, and non-profit and educational institutions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) 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 (d) 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 litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected. Disclosure may also be made to the Department of Justice to obtain legal advice concerning issues raised by the records in this system.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

4. NIH may disclose records to Department contractors and subcontractors for the purpose of collecting, compiling, aggregating, analyzing, or refining records in the system. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

5. NIH may disclose information from this system of records for the purpose of obtaining patent protection for PHS inventions and licenses for these patents to: (a) Scientific personnel, both in this agency and other Government agencies, and in non-Governmental organizations such as universities, who possess the expertise to understand the invention and evaluate its importance as a scientific advance; (b) contract patent counsel and their employees and foreign contract personnel retained by the Department for patent searching and prosecution in both the United States and foreign patent offices; (c) all other Government agencies whom PHS contacts regarding the possible use, interest in, or ownership rights in PHS inventions; (d) prospective licensees or technology finders who may further make the invention available to the public through sale or use; (e) parties, such as supervisors of inventors, whom PHS contacts to determine ownership rights, and those parties contacting PHS to determine the Government's ownership; and (f) the United States and foreign patent offices involved in the filing of PHS patent applications.

6. NIH will report to the Treasury Department, Internal Revenue Service (IRS), as taxable income, the amount of royalty payment paid to PHS inventors.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records will be stored in file folders, computer tapes and computer disks.

RETRIEVABILITY:

Records are retrieved by name of the inventor, EIR number, or keywords relating to the nature of the invention, Case/Serial Number, Licensing Number, internal reference numbers, contractor, agency, Institute, and/or Center.

SAFEGUARDS:

1. Authorized Users: Data on computer files is accessed by password known only to authorized users who are NIH or contractor employees involved in patenting and licensing of PHS inventions. Access to information is thus limited to those with a need to know.

2. Physical Safeguards: Records are stored in a dedicated file room or in locking file cabinets in file folders. During normal business hours, OTT Records Management on-site contractor personnel regulate availability of the files. During evening and weekend hours the offices are locked and the building is closed.

3. Procedural and Technical Safeguards: Data stored in computers will be accessed through the use of passwords known only to the authorized users. A password is required to access the database. All users of personal information in connection with the performance of their jobs (see Authorized Users, above) protect information, including confidential business information submitted by potential licensees, from public view and from unauthorized personnel entering an unsupervised office.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

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'' (HHS Records Management Manual, Appendix B–361), item 1100–L, which allows records to be kept for a maximum of thirty years. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Freedom of Information Act Coordinator, Office of Technology Transfer, Office of Intramural Research, Office of the Director (OD), 6011 Executive Boulevard, Room 325, Bethesda, MD 20892.

Office of Reports and Analysis, Office of Extramural Research, Office of the Director (OD), Building 1, Room 252, 1 Center Drive, Bethesda, Maryland 20892–2184.

Extramural Inventions and Technology Resources Branch, Office of Policy for Extramural Research Administration, Office of Extramural Research, Office of the Director (OD), Rockledge I, 6705 Rockledge Drive, Room 1040, Bethesda, MD 20892–7980.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. The request should include: (a) Full name, and (b) appropriate identifying information on the nature of the invention.

RECORD ACCESS PROCEDURE:

Write to the System Manager specified above to attain access to records and provide the same information as is required under the Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the System Manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Inventors and other collaborating persons, grantees, fellowship recipients and contractors; other Federal agencies; scientific experts from non-Government organizations; contract patent counsel and their employees and foreign contract personnel; United States and foreign patent offices; prospective licensees; PHS Technology Development Coordinators, Internet and commercial databases, and third parties whom PHS contacts to determine individual invention ownership or Government ownership.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0169

SYSTEM NAME:

Medical Staff-Credentials Files, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Credentialing Services Office, Clinical Center (CC), Building 10, Room 1N204, 10 Center Drive, Bethesda, MD 20892–1192.

Write to the System Manager at the address below for a list of Contractor locations, including the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been approved as members of the medical staff at the Warren G. Magnuson Clinical Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical staff names, date of birth, home address and telephone number, office address and telephone number, citizenship, visa information, appointment date, hospital-wide computer access privileges, Institute/Center designation, branch/lab, type of medical staff membership, privilege delineation, professional degree(s) including school of attendance and graduation dates, foreign medical examinations, specialty board certifications, licensing information (including state of licensure and license number), record of disciplinary actions, documentation of training, and admitting privileges.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for collecting the requested information is contained in section 301 (42 U.S.C. 241) of the Public Health Service Act, as amended, outlining the authority of the Secretary to, within the Public Health Service (PHS), promote the coordination of various research and associated activities, including for purposes of study, admitting and treating individuals at PHS facilities. Section 402(b) of the Public Health Service Act (42 U.S.C. 282(b)), as amended, outlining the authority of the Director of the National Institutes of Health (NIH) with respect to the admission and treatment of individuals at NIH facilities for purposes of study.

PURPOSE(S):

These records are used to: (1) Maintain information used in the credentialing and privileging of active medical staff members at the Warren G. Magnuson Clinical Center; (2) document patient care privileges for active members of the medical staff; (3) provide information about active and non-active members of the medical staff to authorized individuals; and (4) report to the National Practitioner Data Bank as required by the provisions of Title IV of Pub. L. 99–660, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) 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 (d) 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 litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

4. NIH may disclose records to Department contractors and subcontractors for the purpose of collecting, compiling, aggregating, analyzing, or refining records in the system. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

5. NIH may disclose information to representatives of the Joint Commission on Accreditation of Healthcare Organizations for the purpose of conducting quality assurance reviews and inspections of the Warren G. Magnuson Clinical Center credentialing policies and procedures.

6. NIH may disclose information from this system of records to State medical boards for purposes of professional quality assurance activities.

7. NIH may disclose information from this system of records to health care facilities for the purpose of verifying that an individual to whom they intend to grant medical staff or patient care privileges has or previously held such privileges at the Warren G. Magnuson Clinical Center.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper forms in file folders and in electronic databases.

RETRIEVABILITY:

Records are retrieved by name, date of birth, type of medical staff membership, Institute/Center and licensing status.

SAFEGUARDS:

1. *Authorized Users:* Data on the computer network system is accessed by a password known only to authorized users who are NIH employees and contractor staff responsible for implementing the medical staff credentials data system. Access to information is thus limited to those with a need to know.

2. *Physical Safeguards:* Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but entry is controlled by on-site personnel.

3. *Procedural and Technical Safeguards:* Access to files is strictly controlled by the system manager. Names and other identifying particulars are deleted when data from original records are encoded for analysis. Data stored in computers is accessed through a network system by use of a password known only to authorized users. All authorized users of personal information in connection with the performance of their jobs (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised office.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

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 1B ''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 2300–293–4, ''Medical Staffs' Credential Files,'' which allows inactive records to be transferred to the Federal Records Center at five year intervals and to be destroyed after thirty years. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Credentialing Services Office, Clinical Center, Building 10, Room 1N204, 10 Center Drive, Bethesda, MD 20892–1192.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the above address. The requester must provide tangible proof of identity (*e.g.*, driver's license). If no identification papers are available, the requester must verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Write to the System Manager specified above to attain access to records and provide the same information as that required under the Notification Procedures. Requesters should also reasonably specify the record contents being requested. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the System Manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0200

SYSTEM NAME:

Clinical, Basic and Population-based Research Studies of the National Institutes of Health (NIH), HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at NIH and Contractor research facilities which collect or provide research data for this system. Contractors may include, but are not limited to: Research centers, clinics, hospitals, universities, medical schools, research institutions/foundations, national associations, commercial organizations, collaborating State and Federal Government agencies, and coordinating centers. A current list of sites, including the address of any Federal Records Center where records from this system may be stored, is available by writing to the appropriate Coordinator listed under Notification Procedure.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adults and/or children who are the subjects of clinical, basic, or population-based research studies of the NIH. Individuals with disease. Individuals who are representative of the general population or of special groups including, but not limited to: normal controls, normal volunteers, family members and relatives; providers of services (*e.g.*, health care and social work); health care professionals and educators, and demographic sub-groups as applicable, such as age, sex, ethnicity, race, occupation, geographic location; and groups exposed to real and/or hypothesized risks (*e.g.*, exposure to biohazardous microbial agents).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains data about individuals as relevant to a particular research study. Examples include, but are not limited to: name, study identification number, address, relevant telephone numbers, social security number (voluntary), driver's license number, date of birth, weight, height, sex, race; medical, psychological and dental information, laboratory and diagnostic testing results; registries; social, economic and demographic data; health services utilization; insurance and hospital cost data, employers, conditions of the work environment, exposure to hazardous substances/compounds; information pertaining to stored biologic specimens (including blood, urine, tissue and genetic materials), characteristics and activities of health care providers and educators and trainers (including curricula vitae); and associated correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

''Research and Investigation,'' ''Appointment and Authority of the Directors of the National Research Institutes,'' ''National Cancer Institute,'' ''National Eye Institute,'' ''National Heart, Lung and Blood Institute,'' ''National Institute on Aging,'' ''National

Institute on Alcohol Abuse and Alcoholism,'' ''National Institute on Allergy and Infectious Diseases,'' ''National Institute of Arthritis and Musculoskeletal and Skin Diseases,'' ''National Institute of Child Health and Human Development,'' ''National Institute on Deafness and Other Communication Disorders,'' ''National Institute of Dental and Craniofacial Research,'' ''National Institute of Diabetes, and Digestive and Kidney Diseases,'' ''National Institute of Drug Abuse,'' ''National Institute of Environmental Health Sciences,'' ''National Institute of Mental Health,'' ''National Institute of Neurological Disorders and Stroke,'' and the ''National Human Genome Research Institute'' of the Public Health Service Act. (42 U.S.C. 241, 242, 248, 281, 282, 284, 285a, 285b, 285c, 285d, 285e, 285f, 285g, 285h, 285i, 285j, 285l, 285m, 285n, 285o, 285p, 285q, 287, 287b, 287c, 289a, 289c, and 44 U.S.C. 3101.)

PURPOSE(S):

To document, track, monitor and evaluate NIH clinical, basic, and population-based research activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; *e.g.*, disclosure of alcohol or drug abuse patient records will be made only in accordance with the restrictions of confidentiality statutes and regulations 42 U.S.C. 241, 42 U.S.C. 290dd–2, 42 CFR part 2, and where applicable, no disclosures will be made inconsistent with an authorization of confidentiality under 42 U.S.C. 241 and 42 CFR part 2a; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; and (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by, these provisions.

2. Disclosure may be made 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.

3. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is, therefore, deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

4. Disclosure may be made to agency contractors, grantees, experts, consultants, collaborating researchers, or volunteers who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. Information from this system may be disclosed to Federal agencies, State agencies (including the Motor Vehicle Administration and State vital statistics offices, private agencies, and other third parties (such as current or prior employers, acquaintances, relatives), when necessary to obtain information on morbidity and mortality experiences and to locate individuals for follow-up studies. Social security numbers, date of birth and other identifiers may be disclosed: (1) To the National Center for Health Statistics to ascertain vital status through the National Death Index; (2) to the Health Care Financing Agency to ascertain morbidities; and (3) to the Social Security Administration to ascertain disabilities and/or location of participants. Social security numbers may also be given to other Federal agencies, and State and local agencies when necessary to locating individuals for participation in follow-up studies.

6. Medical information may be disclosed in identifiable form to tumor registries for maintenance of health statistics, *e.g.*, for use in research studies.

7. PHS may inform the sexual and/or needle-sharing partner(s) of a subject individual who is infected with the human immunodeficiency virus (HIV) of their exposure to HIV, under the following circumstances: (1) The information has been obtained in the course of clinical activities at PHS facilities carried out by PHS personnel or contractors; (2) The PHS employee or contractor has made reasonable efforts to counsel and encourage the subject individual to provide the information to the individual's sexual or needle-sharing partner(s); (3) The PHS employee or contractor determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and (4) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices.

PHS may disclose information to State or local public health departments, to assist in the notification of the subject individual's sexual and/or needle-sharing partner(s), or in the verification that the subject individual has notified such sexual or needle-sharing partner(s).

8. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

9. Disclosure may be made to authorized organizations which provide health services to subject individuals or provide third-party reimbursement or fiscal intermediary functions, for the purpose of planning for or providing such services, billing or collecting third-party reimbursements.

10. The Secretary may disclose information to organizations deemed qualified to carry out quality assessment, medical audits or utilization reviews.

11. Disclosure may be made for the purpose of reporting child, elder or spousal abuse or neglect or any other type of abuse or neglect as required by State or Federal law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on index cards, file folders, computer tapes and disks (including optical disks), photography media, microfiche, microfilm, and audio and video tapes. For certain studies, factual data with study code numbers are stored on computer tape or disk, while the key to personal identifiers is stored separately, without factual data, in paper/computer files.

RETRIEVABILITY:

During data collection stages and follow-up, retrieval is by personal identifier (*e.g.*, name, social security number, medical record or study identification number, etc.). During the data analysis stage, data are normally retrieved by the variables of interest (*e.g.*, diagnosis, age, occupation).

SAFEGUARDS:

1. *Authorized Users:* Access to identifiers and to link files is strictly limited to the authorized personnel whose duties require such access. Procedures for determining authorized access to identified data are established as appropriate for each location. Personnel, including contractor personnel, who may be so authorized include those directly involved in data collection and in the design of research studies, *e.g.*, interviewers and interviewer supervisors; project managers; and statisticians involved in designing sampling plans. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager. Researchers authorized to conduct research on biologic specimens will typically access the system through the use of encrypted identifiers sufficient to link individuals with records in such a manner that does not compromise confidentiality of the individual.

2. *Physical Safeguards:* Records are either stored in locked rooms during off-duty hours, locked file cabinets, and/or secured computer facilities. For certain studies, personal identifiers and link files are separated and stored in locked files. Computer data access is limited through the use of key words known only to authorized personnel.

3. *Procedural Safeguards:* Collection and maintenance of data is consistent with legislation and regulations in the protection of human subjects, informed consent, confidentiality, and confidentiality specific to drug and alcohol abuse patients where these apply. When anonymous data is provided to research scientists for analysis, study numbers which can be matched to personal identifiers will be eliminated, scrambled, or replaced by the agency or contractor with random numbers which cannot be matched. Contractors who maintain records in this system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The OHS project directors, contract officers, and project officers oversee compliance with these requirements. Personnel having access are trained in Privacy Act requirements. Depending upon the sensitivity of the information in the record, additional safeguard measures may be employed.

4. *Implementation Guidelines:* These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

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'' (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Collaborative Perinatal Project records are retained in accordance with item 3000–G–4, which does not allow records to be destroyed. Refer to the NIH Manual Chapter for specific conditions on disposal or retention instructions.

SYSTEM MANAGER(S) AND ADDRESS:

See Appendix I for a listing of current System Managers. This system is for use by all NIH Institutes and Centers.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate IC Privacy Act Coordinator listed below. In cases where the requester knows specifically which System Manager to contact, he or she may contact the System Manager directly (See Appendix I). Notification requests should include: individual's name; current address; date of birth; date, place and nature of participation in specific research study; name of individual or organization administering the research study (if known); name or description of the research study (if known); address at the time of participation; and in specific cases, a notarized statement (some highly sensitive systems require two witnesses attesting to the individual's identity). A requester must verify his or her identity by providing either a notarization of the request or by submitting a written certification that the is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

Individuals will be granted direct access to their medical records unless the System Manager determines that such access is likely to have an adverse effect (*i.e.*, could cause harm) on the individual. In such cases when the System Manager has determined that the nature of the record information requires medical interpretation, the subject of the record shall be requested to designate, in writing, a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. The representative may be a physician, other health professional, or other responsible individual. In this case, the medical/dental record will be sent to the designated representative. Individuals will be informed in writing if the record is sent to the representative. This same procedure will apply in cases where a parent or guardian requests notification of, or access to, a child's or incompetent person's medical record. The parent or guardian must also verify (provide adequate documentation) their relationship to the child or incompetent person as well as his or her own identity to prove their relationship.

If the requester does not know which Institute or Center Privacy Act Coordinator to contact for notification purposes, he or she may contact directly the NIH Privacy Act Officer at the following address: NIH Privacy Act Officer, Office of Management Assessment, 6011 Executive Blvd., Room 601L, Rockville, MD 20852.

NIH Privacy Act Coordinators

Associate Director for Disease Prevention, Office of the Director (OD), Building 1, Room 260, 1 Center Drive, Bethesda, MD 20892.

Privacy Act Coordinator, Clinical Center (CC), Building 10, Room 1N208, 10 Center Drive, Bethesda, MD 20892.

Privacy Act Coordinator, National Center for Complementary and Alternative Medicine (NCCAM), Building 31, Room 2B11, 31 Center Drive, Bethesda, MD 20892–2182.

Privacy Act Coordinator, National Cancer Institute (NCI), Building 31, Room 10A34, 31 Center Drive, Bethesda, MD 20892.

Privacy Act Coordinator, National Center on Minority Health and Health Disparities (NCMHD), Democracy Plaza II, Room 800, 6707 Democracy Boulevard, Bethesda, MD 20892–5465.

Privacy Act Coordinator, National Center for Research Resources (NCRR), Rockledge I, Room 5140, 6705 Rockledge Drive, Bethesda, MD 20892.

Privacy Act Coordinator, National Eye Institute (NEI), Building 31, Room 6A32, 31 Center Drive, Bethesda, MD 20892–2510.

Privacy Act Coordinator, National Human Genome Research Institute (NHGRI), Building 10, 3C710, 10 Center Drive, Bethesda, MD 20892.

Privacy Act Coordinator, National Heart, Lung, and Blood Institute (NHLBI), Building 31, Room 5A33, 31 Center Drive, Bethesda, MD 20892.

Privacy Act Coordinator, National Institute on Aging (NIA), Gateway Building 31, Room 2C234, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Privacy Act Coordinator, National Institute on Alcohol Abuse and Alcoholism (NIAAA), Willco Building, Room 400, 6000 Executive Boulevard, Bethesda, MD 20892–7003.

Privacy Act Coordinator, National Institute of Allergy and Infectious Diseases (NIAID), 6700–B Rockledge Drive, Room 2143, Bethesda, MD 20892.

Privacy Act Coordinator, National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), Natcher Building, Room 5AS49, 45 Center Drive, Bethesda, MD 20892.

Privacy Act Coordinator, National Institute of Biomedical Imaging and Bioengineering (NIBIB), Building 31, Room 1B37, 31 Center Drive, Bethesda, MD 20892–2077.

Privacy Act Coordinator, National Institute of Child Health and Human Development (NICHD), Building 31, Room 2A11, 31 Center Drive, Bethesda, MD 20892.

Privacy Act Coordinator, Office of Extramural Affairs, National Institute on Drug Abuse (NIDA), Neuroscience Center, 6001 Executive Boulevard, Room 3158, Bethesda, MD 20892–9547.

Privacy Act Coordinator, National Institute on Deafness and Other Communication Disorders (NIDCD), Building 31, Room 3C02, 31 Center Drive, Bethesda, MD 20892.

Privacy Act Coordinator, National Institute of Dental and Craniofacial Research (NIDCR), Natcher Building, Room 4AS25, 45 Center Drive, Bethesda, MD 20892–6401.

Privacy Act Coordinator, National Institute of Diabetes and Digestive and Kidney Disease (NIDDK), Building 31, Room 9A47, 31 Center Drive, Bethesda, MD 20892.

Privacy Act Coordinator, National Institute of Environmental Health Sciences (NIEHS), PO Box 12233, Research Triangle Park, NC 27709.

Privacy Act Coordinator, National Institute of General Medical Sciences (NIGMS), Natcher Building, Room 2AN32, 45 Center Drive, Bethesda, MD 20892.

Privacy Act Coordinator, National Institute of Mental Health (NIMH), Neuroscience Center, 6001 Executive Boulevard, Room 8102, Bethesda, MD 20892.

Privacy Act Coordinator, National Institute of Neurological Disorders and Stroke (NINDS), Building 31, Room 8A33, 31 Center Drive, Bethesda, MD 20892.

Privacy Act Coordinator, National Institute of Nursing Research (NINR), Rockledge II, Room 710, 6701 Rockledge Drive, Bethesda, MD 20892.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURE:

Contact the appropriate official at the address specified under Notification Procedure, and reasonably identify the record, specify the information being contested, and state corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

The system contains information obtained directly from the subject individual by interview (face-to-face or telephone), written questionnaire, or by other tests, recording devices or observations, consistent with legislation and regulation regarding informed consent and protection of human subjects. Information is also obtained from other sources, including but not limited to: referring medical physicians, mental health/alcohol/drug abuse or other health care providers; hospitals; organizations providing biological specimens; relatives; guardians; schools; and clinical medical research records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System Manager(s) and Address(es)

Associate Director for Disease Prevention, Office of the Director (OD), Building 1, Room 260, 1 Center Drive, Bethesda, MD 20892.

Computer Systems Analyst, Division of Cancer Treatment and Diagnosis, National Cancer Institute (NCI), Executive Plaza North, Room 344, 6130 Executive Boulevard, Bethesda, MD 20892.

American Burkitt's Lymphoma Registry, Division of Cancer Etiology, National Cancer Institute (NCI), Executive Plaza North, Suite 434, 6130 Executive Boulevard, Bethesda, MD 20892.

Chief, Genetic Epidemiology Branch, Division of Cancer Epidemiology and Genetics, National Cancer Institute (NCI), Executive Plaza South, Room 7122, 6120 Executive Boulevard, Bethesda, MD 20892–7236.

Program Director, Research Resources, Biological Carcinogenesis Branch, Division of Cancer Etiology, National Cancer Institute (NCI), Executive Plaza North, Room 540, 6130 Executive Boulevard, Bethesda, MD 20892.

Chief, Environmental Epidemiology Branch, Division of Cancer Etiology, National Cancer Institute (NCI), Executive Plaza North, Room 443, 6130 Executive Boulevard, Bethesda, MD 20892.

Associate Director, Surveillance Program, Division of Cancer Prevention, National Cancer Institute (NCI), Executive Plaza North, Room 343K, 6130 Executive Boulevard, Bethesda, MD 20892.

Head, Biostatistics and Data Management Section, Center for Cancer Research, National Cancer Institute (NCI), Building 6116, Room 702, 6116 Executive Boulevard, Bethesda, MD 20892.

Chief, Clinical Research Branch, Center for Cancer Research, Frederick Cancer Research and Development Center, National Cancer Institute (NCI), 501 W. 7th Street, Room 3, Frederick, MD 21702.

Deputy Branch Chief, Navy Hospital, NCI-Naval Medical Oncology Branch, Center for Cancer Research, National Cancer Institute (NCI), Building 8, Room 5101, Bethesda, MD 20814.

Chief, Pharmaceutical Management Branch, Cancer Therapy Evaluation Program, Division of Cancer Treatment and Diagnosis, National Cancer Institute (NCI), Executive Plaza North, Room 804, 6130 Executive Boulevard, Bethesda, MD 20892.

Director, Extramural Clinical Studies, Frederick Cancer Research and Development Center, National Cancer Institute (NCI), Fort Detrick, Frederick, MD 21702.

Clinical Operations Manager, National Eye Institute (NEI), Building 10, Room 10S224, 10 Center Drive, Bethesda, MD 20892.

Director, Division of Biometry and Epidemiology, National Eye Institute (NEI), Building 31, Room 6A52, 31 Center Drive, Bethesda, MD 20892.

Associate Director, Office of Clinical Affairs, National Heart, Lung, and Blood Institute (NHLBI), Building 10, Room 8C104,10 Center Drive, Bethesda, MD 20892–1754.

Senior Scientific Advisor, Office of the Director, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute (NHLBI), Federal Building, Room 220, 7550 Wisconsin Avenue, Bethesda, MD 20892.

Chief Laboratory of Epidemiology, Demography and Biometry, National Institute on Aging (NIA), Gateway Building, Room 3C309, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Chief, Research Resources Branch, Intramural Research Program, National Institute on Aging (NIA), 5600 Nathan Shock Drive, Baltimore, MD 21224.

Clinical Director, National Institute on Aging (NIA), 5600 Nathan Shock Drive, Baltimore, MD 21224.

Deputy Director, Division of Biometry and Epidemiology, National Institute on Alcohol Abuse and Alcoholism (NIAAA), Willco Building, Room 514, 6000 Executive Boulevard, Bethesda, MD 20892–7003.

Deputy Director, Division of Clinical and Prevention Research, National Institute on Alcohol Abuse and Alcoholism (NIAAA), Willco Building, Room 505, 6000 Executive Boulevard, Bethesda, MD 20892–7003.

Chief, Respiratory Viruses Section, Laboratory of Infectious Diseases, National Institute of Allergy and Infectious Diseases (NIAID), Building 7, Room 106, 7 Memorial Drive, Bethesda, MD 20892.

Chief, Hepatitis Virus Section, Laboratory of Infectious Diseases, National Institute of Allergy and Infectious Diseases (NIAID), Building 7, Room 202, 7 Memorial Drive, Bethesda, MD 20892.

Chief, Biometry Branch, Division of Microbiology and Infectious Diseases, National Institute of Allergy and Infectious Diseases (NIAID), 6700–B Rockledge Drive, Room 3120, Bethesda, MD 20892.

Clinical Director, National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), Building 10, Room 9S205, 10 Center Drive, Bethesda, MD 20892.

Chief, Contracts Management Branch, National Institute of Child Health and Human Development (NICHD), Executive Plaza North, Room 7A07, 6130 Executive Boulevard, Bethesda, MD 20892.

Director of Intramural Research, National Institute on Deafness and Other Communication Disorders (NIDCD), Building 31, Room 3C02, 31 Center Drive, Bethesda, MD 20892.

Chief, Scientific Programs Branch, National Institute on Deafness and Other Communication Disorders (NIDCD), Executive Plaza South, Room 400C, 6120 Executive Boulevard, Bethesda, MD 20892–7180.

Clinical Director, National Institute of Dental and Craniofacial Research (NIDCR), Building 10, Room 1N117, 10 Center Drive, Bethesda, MD 20892–1191.

Chief, Scientific Review Branch, National Institute of Dental and Craniofacial Research (NIDCR), Building 10, Room 1N117, 10 Center Drive, Bethesda, MD 20892–1191.

Research Psychologist, Gene Therapy and Therapeutics Branch, National Institute of Dental and Craniofacial Research (NIDCR), Building 10, Room 1N105, 10 Center Drive, Bethesda, MD 20892–1190.

Chief, Clinical Investigations, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), Building 10, Room 9N222, 10 Center Drive, Bethesda, MD 20892.

Chief, Phoenix Clinical Research Section, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), Phoenix Area Indian Hospital, Room 541, 4212 North 16th Street, Phoenix, AZ 85016.

Chief, Diabetes Research Section, Division of Diabetes, Endocrinology, and Metabolic Diseases, National Institute of Diabetes and Digestive and Kidney Disease (NIDDK), Natcher Building, Room 5AN18G, 45 Center Drive, Bethesda, MD 20892–6600.

Privacy Act Coordinator, Office of Extramural Affairs, National Institute on Drug Abuse (NIDA), 6001 Executive Boulevard, Room 3158, Bethesda, MD 20892–9547.

Chief, Epidemiology Branch, National Institute of Environmental Health Sciences (NIEHS), PO Box 12233, Research Triangle Park, NC 27709.

Director, Intramural Research Program, National Institute of Mental Health (NIMH), Building 10, Room 4N224, 10 Center Drive, Bethesda, MD 20892.

Privacy Act Coordinator, National Institute of Mental Health (NIMH), Neuroscience Center, Room 8102, 6001 Executive Boulevard, Bethesda, MD 20982.

Privacy Act Coordinator, National Institute of Neurological Disorders and Stroke (NINDS), Building 31, Room 8A33, 31 Center Drive, Bethesda, MD 20892.

Chief, Epilepsy Branch, National Institute of Neurological Disorders and Stroke (NINDS), Neuroscience Center, 6001 Executive Boulevard, Suite 2110, Bethesda, MD 20892–9523.

Assistant Director, Clinical Neurosciences Program, Division of Intramural Research, National Institute of Neurological Disorders and Stroke (NINDS), Building 10, Room 5N234, 10 Center Drive, Bethesda, MD 20892.

Acting Chief, Laboratory of Central Nervous Systems Studies, Intramural Research Program, National Institute of Neurological Disorders and Stroke (NINDS), Building 36, Room 4A21, 36 Convent Drive, Bethesda, MD 20892–4123.

Clinical Director, National Human Genome Research Institute (NHGRI), Building 10, Room 10C101D, 10 Center Drive, Bethesda, MD 20892.

Deputy Director, Division of Extramural Research, National Institute of Neurological Disorders and Stroke (NINDS), Neuroscience Center, Room 3307, 6001 Executive Boulevard, Bethesda, MD 20892.

Director, Office of Clinical and Regulatory Affairs, Division of Extramural Research and Training, Democracy Plaza II, Room 401, 6707 Democracy Boulevard, Bethesda, MD 20892–5475.

Privacy Act Coordinator, National Institute of Biomedical Imaging and Bioengineering (NIBIB), Building 31, Room 1B37, 31 Center Drive, Bethesda, MD 20892–2077.

Privacy Act Coordinator, National Center on Minority Health and Health Disparities (NCMHD), Democracy Plaza II, Room 800, 6707 Democracy Boulevard, Bethesda, MD 20892–5465.

09–25–0202

SYSTEM NAME:

Patient Records on PHS Beneficiaries (1935–1974) and Civilly Committed Drug Abusers (1967–1976) Treated at the PHS Hospitals in Fort Worth, Texas, or Lexington, Kentucky, HHS/NIH/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Intramural Research Program, National Institute on Drug Abuse (NIDA), National Institutes of Health, Johns Hopkins Bayview Medical Center, P.O. Box 5180, Baltimore, Maryland 21224.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

Washington National Records Center, 4205 Suitland Road, Washington, D.C. 20409.

Iron Mountain, 8200 Preston Court, Suite One, Jessup, MD 20794.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilly committed narcotic addicts (1967–1976) and adult PHS beneficiaries (1935–1974) treated at either the PHS hospital in Fort Worth, Texas, or Lexington, Kentucky.

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative records, such as treatment admission and release dates, name and address, and other demographic data; medical records, such as, but not limited to, medical history information, drug abuse/use data as well as treatment information, any laboratory tests, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Narcotic Addict Rehabilitation Act of 1966, and Narcotic Addict Rehabilitation Amendments of 1971, Titles I and III (42 U.S.C. 3411 et seq. and 28 U.S.C. 2901 et seq.), and Public Health Service Act, Sections 321–326, 341(a) and (c) (42 U.S.C. 248–253, 257(a) and (c)).

PURPOSE(S):

The records were collected originally to monitor the individual's progress while being treated at either of two PHS hospitals and to ensure continuity of that care. These systems are now inactive. The records are used to respond to requests from subject individuals (or his/her designated representative) to (1) establish eligibility for certain Federal benefits for the

individual or his/her dependent(s), and (2) provide information to subsequent health care providers at the request of the individual regarding medical treatment received to ensure continuity of care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records at National Institute on Drug Abuse (NIDA) are on microfilm and contain only part of the admission and discharge information. The microfilm is stored in a file cabinet in a locked room. Records sent to Federal Records Center are stored in GSA-approved storage containers.

RETRIEVABILITY:

The administrative records and microfilm are filed by patient name. The medical records are filed either by patient name or by patient's hospital number with a cross-reference list at NIDA matching number to name.

SAFEGUARDS:

1. *Authorized Users:* Only the System Manager and designated staff.

2. *Physical Safeguards:* The microfilm is in a room which has limited access, or stored at a security coded warehouse. The room is located in a building with a 24-hour security patrol/television surveillance system. Sign in and out procedures are used at all times. The warehouse has security access; records can only be retrieved by the System Manager or designated staff using a confidential code number. The warehouse is patrolled on a 24-hour basis with television surveillance.

3. *Procedural Safeguards:* Only the System Manager and his/her staff have access to the microfilm information and have been trained in accordance with the Privacy Act.

4. *Implementation Guidelines:* These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

All administrative and medical records have been retired to a Federal Records Center. The records collected under the Narcotic Addict Rehabilitation Act of 1966 will be destroyed when they are 25 years old, which will be in 2001 because the last patient was released from treatment in 1976. The PHS beneficiaries' records will be destroyed at the same time. The records will be shredded in 2003 upon written request from the system manager.

SYSTEM MANAGER(S) AND ADDRESS:

Medical Records Officer, Intramural Research Program, National Institute on Drug Abuse (NIDA), Johns Hopkins Bayview Medical Center, Box 5180, Baltimore, MD 21224.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. An individual may learn if a record exists about himself or herself upon written request with a notarized signature. The request should include, if known: Patient hospital record number, full name or any alias used, patient's address during treatment, birth date, veteran status (if applicable) and approximate dates in treatment, and social security number.

An individual who requests notification of a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the individual of its content at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under Notification Procedures above, and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Patients; patients' drug treatment program counselors; court records; hospital personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0203

SYSTEM NAME:

National Institute on Drug Abuse, Intramural Research Program, Federal Prisoner and Non-Prisoner Research Files, HHS/NIH/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Intramural Research Program, National Institute on Drug Abuse (NIDA), P.O. Box 5180, Baltimore, MD 21224.

NIDA Warehouse, 5550 Eastern Avenue, Baltimore, MD 21224.

Quest, Pathology Building, 1901 Silver Spring Road, Baltimore, MD 21227.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

NOVA, Johns Hopkins Bayview Medical Center, Building C, 5500 Nathan Shock Drive, Baltimore, MD 21224.

Iron Mountain, 8200 Preston Court, Suite One, Jessup, MD 20794.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteers, adult males (from 1968 to present), adult females (beginning in l985) and adolescents (ages 13–18, beginning in 1983) and children (neonate to 12 beginning in 1989). Clinical research projects conducted at the Addiction Research Center (ARC). This system also includes records on adult Federal prisoners involved in research projects at ARC when located at Lexington, Kentucky, from 1968–1976, and some records from system 09–30–0020 to be used for statistical research only.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records involved are administrative, medical and research records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301(a) (42 U.S.C. 241(a)); Sections 341(a) and 344(d) (42 U.S.C. 257(a) and 260(d)); Sections 503 and 515 (42 U.S.C. 290aa–2 and 290cc). These sections authorize the conduct of research in all areas of drug abuse.

PURPOSE(S):

1. To collect and maintain a data base for research activities at NIDA/IRP.

2. To enable Federal drug abuse researchers to evaluate and monitor the subjects' health during participation in a research project. The areas of research include, but are not limited to, biomedical, clinical, behavioral, pharmacological, psychiatric, psycho social, epidemiological, etiological,

statistical, treatment and prevention of narcotic addiction and drug abuse.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The National Institute on Drug Abuse (NIDA) uses a contractor to recruit volunteers and to screen these individuals for their acceptability to participate in specific research projects, and limits the contractor's access to the records to these procedures. NIDA also uses a contractor to perform routine medical laboratory tests on blood and urine samples. These routine tests verify that the subject is in good health. Both contractors disclose records from this system only to NIDA and are required to maintain Privacy Act safeguards with respect to such records.

2. (a) PHS may inform the sexual and/or needle-sharing partner(s) of a subject individual who is infected with the human immunodeficiency virus (HIV) of their exposure to HIV, under the following circumstances: (1) The information has been obtained in the course of clinical activities at PHS facilities carried out by PHS personnel or contractors; (2) The PHS employee or contractor has made reasonable efforts to counsel and encourage the subject individual to provide the information to the individual's sexual or needle-sharing partner(s); (3) The PHS employee or contractor determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and (4) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices.

(b) PHS may disclose information to State or local public health departments, to assist in the notification of the subject individual's sexual and/or needle-sharing partner(s), or in the verification that the subject individual has, notified such sexual or needle-sharing partner(s).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders or on an internal EISnet, CDS, computer disk, magnetic tape, or microfilm.

RETRIEVABILITY:

Administrative and medical records are indexed and retrieved by the subject's name and identification code number. Research records are indexed and retrieved by the subject's name and identification code number.

SAFEGUARDS:

1. *Authorized Users:* Only authorized NIDA Intramural Research Program staff are allowed access to these files.

2. *Physical Safeguards:* Files and file rooms are locked after business hours. Building has electronic controlled entry at all times with a 24-hour guard/television surveillance system. The computer terminals are in a further secured area.

3. *Procedural Safeguards:* All users of personal information in connection with the performance of their jobs protect information from unauthorized personnel. Access codes to the research records are available only to the Principal Investigator and his/her research team. Access to the records is strictly limited to those staff members trained in accordance with the Privacy Act. The contractor staff members are required to secure the information in accordance with the Privacy Act. Project Officer and contracting officials will monitor contractor compliance.

4. *Access to the Clinical Data Warehouse (EISnet):* The NIDA IRP computerized medical and research record is strictly limited. All staff must be authorized to use the system and be granted an access code (user name and password) by the system sponsor (NIDA, IRP Chief of Biomedical Informatics). Passwords are required to be changed every six months. Access is limited by job classification and is on a need to know basis only. Data entered is time and date stamped by the staff member's name. Data is not altered once entered. While logged into the system, the name of the staff member is displayed on the screen. An activity log of each use is kept. Data is backed up on a daily basis.

5. *Implementation Guidelines:* These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

In addition, because much of the data collected in these research projects are sensitive and confidential, special safeguards have been established. Certificates of confidentiality have been issued under Protection of Identity—Research Subjects Regulations (42 CFR part 2a) to those projects initiated since February 1980. This authorization enables persons engaged in research on mental health, including research on the use and effect of psychoactive drugs, to protect the privacy of research subjects by withholding their names or other identifying characteristics from all persons not connected with the conduct of the research. Persons so authorized may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceeding to identify such individuals. In addition, these records are subject to 42 CFR part 2, the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations (42 CFR 2.56), which state: ''Where the content of patient records has been disclosed pursuant to these regulations for the purpose of conducting scientific research * * * information contained therein which would directly or indirectly identify any patient may not be disclosed by the recipient thereof either voluntarily or in response to any legal process whether Federal or State.''

RETENTION AND DISPOSAL:

Records will be disposed of in accordance with the NIH Records Control Schedule, *i.e.*, when the records are ten years old or no longer required for administrative or research purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Medical Records Officer, Intramural Research Program, National Institute on Drug Abuse (NIDA), Johns Hopkins Bayview Medical Center, Building C, P.O. Box 5180, Baltimore, MD 21224.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. Provide a notarized signature as proof of identity. This can be waived if the request is made through official Federal, state, or local channels. The request should include the patient's register number and/or the number of years of incarceration (for prisoner subjects), full name at time of participation in the research project, date(s) of research participation, and title of research project or name of drug being studied. An individual who requests notification of a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. A parent or legal guardian who requests notification of an adolescent's record shall designate a family physician or other health professional (other than a family member) of the Addiction Research Center staff to whom the record, if any, will be sent. The parent or legal guardian must verify in writing the relationship to the adolescent as well as his/her own identity.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably

specify the record contents being sought. An individual may also request an accounting of disclosures that have been made of his/her records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought and reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

The individual; observations and medical recordings (such as blood pressure, dosage of compound administered, etc.) made by the Principal investigator and his/her research team; system of records number 09–30–0020; drug treatment programs; Bureau of Prisons; case workers; psychiatrists; research laboratories; and pharmacies and hospitals. Many of these records are confidential and privileged communication is guaranteed under Section 344(d) of the PHS Act.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0207

SYSTEM NAME:

Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse and on Treatment Medications, HHS/NIH/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

University of California, San Francisco, Langley Porter Psychiatric Institute, San Francisco, CA 94143.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Normal, healthy adults who voluntarily participate in studies on the pharmacokinetics and pharmacodynamics of psychoactive drugs at Langley Porter Psychiatric Institute, during the period September 1987 through September 2005.

CATEGORIES OF RECORDS IN THE SYSTEM:

Research records on each subject-participant contain the following information: name; clinician's records including medical history, laboratory test results, physical examinations, psychological profile, and drug use profile; drug study data including records of drugs administered, exposures to radioactivity, and drug reactions; and date of study in which the subject participated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Sections 301(a), 503 and 405 (42 U.S.C. 241 and 284).

PURPOSE(S):

The primary purpose of this system is to support research on the pharmacokinetics and pharmacodynamics of drugs of abuse as well as treatment drugs. The term ''pharmacokinetics'' refers to the manner in which the human body processes a drug. ''Pharmacodynamics'' refers to the manner in which the drug affects the human body.

The clinical investigator used data of a medical nature that is contained in the system to make determinations regarding drug dosages and/or radiochemical exposures appropriate to the individual human subject-participants, in order to preserve and protect the health of each. The system also provides baseline data for studying the drug effects.

The Food and Drug Administration (FDA) also may use the records in routine inspections FDA conducts in accordance with its responsibilities to develop standards on the composition, quality, safety, and efficacy of drugs administered to humans, and to monitor experimental usage of drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. We may disclose to a congressional office the record of an individual in response to a verified inquiry from the congressional office made at the written request of the individual.

2. NIH contractors, use the records in this system to accomplish the research purpose for which the records are collected. The contractors are required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The contractor maintains the records on paper in file folders.

RETRIEVABILITY:

The contractor indexes and retrieves the records by the subject-participant's name.

SAFEGUARDS:

1. *Authorized Users:* Only the contract Project Director and his/her research team and the Federal Project Officer and his/her support staff have access to these records.

2. *Physical Safeguards:* The contractor keeps all records in a locked metal file cabinet in premises with limited accessibility. Only the clinical investigator (Project Director) has the key to the locked files.

3. *Procedural Safeguards:* Only the contract staff have access to the files. Persons other than subject participants who request individually identifiable data from a record, must provide written consent from the subject participant permitting the requested disclosure. The only exception would be for disclosure to persons or organizations permitted by the Privacy Act, Section 3(B) to obtain personally identifiable data.

4. *Implementation Guidelines:* These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook. In addition, the contract staff complies with contractor's (University of California, San Francisco) standard procedures for safeguarding data.

RETENTION AND DISPOSAL:

The records will be kept for at least two years after FDA approves the new drug application for the study medication or the IND is withdrawn. At that time, the NIDA project officer will authorize in writing the clinical investigators to destroy the records by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Project Officer, Pharmacokinetic Studies on Drugs of Abuse, Medications Development Division, National Institute on Drug Abuse (NIDA), Neuroscience Center, Room 4123, 6001 Executive Boulevard, Bethesda, MD 20892–9551.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager listed above.

Provide the following information: subject-participant's full name and a letter of request (or permission, if the requester is not the subject-participant) with notarized signature of the individual who is the subject of the record, approximate date(s) of experiment(s) in which the individual participated, and drug name (if known). In addition, an individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible

representative who will be willing to review the record and inform the subject individual of its content at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURE:

Contact the System Manager at the address above and reasonably identify the record, specify the information to be contested, the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

The subject-participants and the contractor personnel conducting the research studies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0208

SYSTEM NAME:

Drug Abuse Treatment Outcome Study (DATOS), HHS/NIH/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Research Triangle Institute, Center for Social Research and Policy Analysis, Research Triangle Park, NC 27709.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Voluntary adult clients of Federally-funded treatment programs, including Treatment Alternative Street Crime (TASC) Programs of the Department of Justice, who requested to be included in TOPS from 1979 through 1986. New data collected from voluntary adults/adolescent clients of public and private funded-treatment programs beginning in 1991 and will continue through 1997.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories are: demographic data, treatment outcome data, treatment process data, client locator information, and personal identifiers (name and assigned numerical identifier).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Sections 301 and 405 (42 U.S.C. 241 and 284.)

PURPOSE(S):

The purpose of the system is to compile information on drug abusers in drug abuse treatment programs in order to derive information on the treatment environments and abusers' behaviors and characteristics subsequent to treatment. Researchers and drug abuse service providers may use the aggregate data to address issues and generate hypotheses to understand better the interactions among the client and community.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Within the restrictions set forth in HHS regulations concerning the confidentiality of drug abuse patient records (42 CFR 2.56), we may disclose a record for a research purpose, when the Department: (a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (c) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except: (A) In emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; (d) has secured a written statement attesting to the recipient's understanding of, and willingness to, abide by these provisions.

2. The Research Triangle Institute, an NIH contractor, uses the records in this system to accomplish the research purpose for which the records are collected. In the event of followup studies or continuation studies because the contract has been terminated for convenience by the Government, we may disclose records in this system to a subsequent NIH contractor. We would require the new contractor to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Interview forms, magnetic tapes, and disks.

RETRIEVABILITY:

Records are indexed and retrieved by unique alpha numerical identifier. In order to relate the data collected to specific individuals, one must use the link file discussed under Safeguards.

SAFEGUARDS:

1. *Authorized Users:* Contractor personnel, the agency project officer, and agency employees whose duties require the use of the information in the system.

2. *Physical Safeguards:* The data management task leader, the project leader, or the project director provide technical supervision of all data collection and processing activities. Individually identified forms are stored in a secure, vault-like room provided for this purpose. Authorized personnel have access to the room by one locked door with controlled entry, i.e., only on the written authority of the professional staff member in charge. Computerized records are kept in a vault area with limited accession.

3. *Procedural Safeguards:* Because some of the data collected in this study, such as data on drug use, are sensitive and confidential, special safeguards have been established. A Certificate of Confidentiality has been issued under 42 CFR part 2a. This authorization enables persons engaged in research on mental health, including research on the use and effect of psychoactive drugs, to protect the privacy of research subjects by withholding the names or other identifying characteristics from all persons not connected with the conduct of the research. Persons so authorized may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals. In addition, these records are subject to 42 CFR part 2, the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations (42 CFR 2.56), which state: ''Where the content of patient records has been disclosed pursuant to (these regulations) for the purpose of conducting scientific research * * *. information contained

therein which would directly or indirectly identify any patient may not be disclosed by the recipient thereof either voluntarily or in response to any legal process whether Federal or State.''

Another safeguard is that the forms containing subject identification information for client followup and data matching purposes do not include any reference to the purpose of the study.

Identification and location information is kept separate from any information that would suggest that the respondent has been in a drug treatment program.

Information on completed forms is entered immediately on the computer. Completed forms and computerized data are released only to authorized persons. Only aggregate data are provided and used in the preparation of necessary and appropriate reports.

A link file system is used. This system has three components: (1) Personal information, (2) data base information, and (3) the link file, which contains identifying number pairs which can be used to match data with individuals. The advantage of this system is that the data base can be used directly for report generation, etc., without the use of decrypting subroutines or access to the personal information or matching link files.

In addition, the computer center being utilized has developed an extensive security system to protect computer account codes and data. This system is described in a publication that is available from the System manager upon request.

We do not anticipate any disclosure of individually identifiable information to other persons or organizations within the Department of Health and Human Services. Nor does the contractor provide individually identification information to the Department of Justice, with which NIDA has a cooperative agreement for this study.

4. *Implementation Guidelines:* These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook. In addition, project staff complies with the contractor's (Research Triangle Institute) standard procedures for safeguarding data.

The contractor provides only aggregate information to NIDA.

RETENTION AND DISPOSAL:

The contractor destroys interview forms by shredding or burning immediately after contractor staff have completed and verified direct entry on magnetic tape or disk storage. The contractor will destroy individual identification and location data by shredding or burning, under the explicit written authorization of the System manager, which is anticipated to be no longer than five years after the termination of the study unless the information is needed for research purposes. We will retain aggregate data tapes for research purposes. These tapes will not have any individually identifiable information. In accordance with the NIH Records Control Schedule, these tapes will be retained for five years after completion of the project (approximately 2002). At that time, the tapes will be retired to the Federal Records Center and destroyed when they are ten years old or when they are no longer needed for research purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Drug Abuse Treatment Outcome Study (DATOS), Project Officer, Services Research Branch, Division of Epidemiology, Services, and Prevention Research, National Institute on Drug Abuse (NIDA), Neuroscience Center, Room 4222, 6001 Executive Boulevard, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. An individual may learn if a record exists about himself/herself upon written request, with notarized signature. The request should include, if known, name of the researcher, location of the research site, approximate date of data collection, any alias used, and subject identification number.

An individual who requests notification of a medical record shall, at the time the request in made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or legal guardian who requests notification of an adolescent's record shall designate a family physician or other health professional (other than a family member) of the Division of Clinical Research staff to whom the record, if any, will be sent. The parent or legal guardian must verify in writing the relationship to the adolescent as well as his/her own identity.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

Persons other than subject individuals, who request individually identifiable data from a record must provide written consent from the subject individual permitting the requested disclosure. The only exception (if not in conflict with confidentiality regulations) would be for disclosure to persons or organizations permitted by the Privacy Act, section 3(b), to obtain personally identifiable data.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Research subjects, and staff in participating drug abuse treatment programs, written clinical evaluations, counselors, psychiatrists, psychotherapists, family members, research assistants, hospitals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0209

SYSTEM NAME:

Subject-Participants in Drug Abuse Research Studies on Drug Dependence and in Research Supporting Investigational New Drug and New Drug Applications, HHS/NIH/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Veterans Administration Hospital, Cooperative Studies Program, Department of Veterans Medical Center, Perry Point, MD 21902.

Division of Treatment Research and Development, National Institute on Drug Abuse (NIDA), Neuroscience Center, Room 4123, 6001 Executive Boulevard, Bethesda, MD 20892.

Division of Intramural Research Programs, National Institute on Drug Abuse (NIDA), 4940 Eastern Avenue, Baltimore, MD 21224.

Write to the System Manager at the address below for the address of any new locations where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Voluntary clients of Federally funded and other drug abuse treatment

programs who have requested to receive investigational new or marketed drugs, such as but not limited to, naltrexone, levo-alpha acetylmethadol (LAAM), buprenorphine, disulfiram, selegiline, bupropion, and GBR–12909 as part of their treatment. Data collection will continue through calendar year 2010.

CATEGORIES OF RECORDS IN THE SYSTEM:

Demographic data, treatment outcome data, treatment process data, client locator information, and personal identifiers (name and assigned numerical identifier).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Sections 301, 464p, and 405 (42 U.S.C. 241, and 284).

PURPOSE(S):

1. To maintain information on the safety and effectiveness of drugs for treatment of drug dependence with or without abuse potential in various treatment environments and modalities and changes in the behavior and characteristics of drug abusers who received these substances as part of their treatment regimen.

2. To provide data required by the Food and Drug Administration (FDA) to support research on drug dependence, Investigational New Drug Applications (INDs) and potential New Drug Applications (NDAs) for various drugs, and to treat drug dependence with or without abuse potential. A new drug application is a notice to FDA that a pharmaceutical company believes they have enough data to demonstrate the safety and efficacy of a substance to satisfy FDA for marketing the substance. FDA may also use the records in routine inspections that FDA conducts in accordance with its responsibilities to develop standards on the composition, quality, safety and efficacy of drugs administered to humans, and to monitor experimental usage of drugs.

3. To conduct research on the pharmacology, toxicology, and behavioral characteristics of drugs of abuse alone or in combination with proposed treatment drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NIH contractor(s) and/or interagency collaborators (*i.e.* Department of Veteran's Affairs) use the records in the system to accomplish the research and development purposes for which the records were collected. In the event of a followup study or continuation study, the responsible project officer may disclose records in this system to a subsequent NIH contractor(s). Any new contractor(s) is and would be required to maintain Privacy Act safeguards with respect to such records and to comply with the confidentiality restrictions of 42 CFR part 2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Interview and assessment forms, video tapes, magnetic tapes, disks and microfiche in boxes in closed cabinets in a locked room with limited accessibility.

RETRIEVABILITY:

The records are indexed and retrieved by subject-participant's name code (*i.e.*, initials—not name) and unique numerical identifier. In order to relate the data collected to specific individuals, however, one must use the link file discussed under safeguards.

SAFEGUARDS:

1. *Authorized Users:* For all of the studies, the System Manager or Federal Project Officer and only authorized contract staff have access to the records (computerized and hard copy files) in the system. The contractor provides only aggregate data in reports to NIDA, FDA, or the public. Only the NIDA personnel mentioned previously and selected authorized contract staff, have access to the stored records. A certificate of confidentiality is issued to researchers conducting these studies under 42 CFR, part 2, Protection of Identity—Research Subjects. This authorization enables persons engaged in research on mental health, including research on the use and effect of psychoactive drugs, to protect the privacy of research subjects by withholding the names or other identifying characteristics from all persons not connected with the conduct of the research. Persons so authorized may not be compelled in any Federal, State or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals. These regulations do not prohibit voluntary disclosure by the researcher. However, the records of these studies also are subject to 42 CFR part 2, the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations (42 CFR part 56), which state: Where the content of patient records has been disclosed. Pursuant to (these regulations) for the purpose of conducting scientific research * * * information contained therein which would directly or indirectly identify any patient may not be disclosed by the recipient thereof either voluntarily of in response to any legal process whether Federal or State.'' The contractor's institutional review board reviewed and approved the safeguards described above in accordance with 45 CFR part 46 on the Protection of Human Subjects.

2. *Physical Safeguards:* For the study records, the contractor(s) stored individually identified forms in a locked room with controlled entry, *i.e.*, only on written authority of the professional staff member in charge of data handling and processing). The contractor staff enters the collected information onto computer systems or disks as soon after contact with the subject-participant as possible, and stores the computerized records in a secured area with access limited as above.

For the study records, NIDA stores any individually identified forms in a lockable cabinet in a secure room. Only authorized NIDA personnel (*i.e.*, select members of the Division of Treatment Research and Development professional staff and their support staff have access to the room with controlled entry. The room is in a building which has a 24-hour guard/television surveillance system and has controlled entry (picture identification sign in and out procedures) before and after normal working hours.

Another safeguard for these studies is that the forms containing subject identification information do not include any reference to the purpose of the study. The identification information is separate from any information that would suggest that the respondent is or has been in a drug abuse treatment program. In addition, the computer centers being utilized for data analyses have developed an extensive security system to protect computer account codes and data.

3. *Procedural Safeguards:* Access to the computerized records of the studies is protected by a computerized password routine which is changed periodically. In addition, the project staff complies with the contractor's standard procedures for safeguarding data. The link file system that identifies individuals with personal data has three components: (1) Identification information, (2) data base information, and (3) the link file, which contains identifying number pairs which match data with individuals. The advantage of this system is that one may use the baseline data directly for report generation, etc., without using the subroutines or accessing the personal information or link files.

4. *Implementation Guidelines:* These practices are in compliance with the standards of Chapter 45–13 of the HHS

General Administration Manual, sbull I11''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

NIDA will destroy identifiable information by shredding or burning when it is no longer needed for analysis or research purposes; then the tapes, and/or other electronic media, will be erased. NIDA will destroy individual identification and match-up information from other studies by shredding or burning five years after FDA completes the review and approves the new drug applications or when they are no longer needed for research purposes.

NIDA will retain the aggregate data tapes, and/or other electronic media, and/or paper records from studies for research purposes. These tapes will not have any individually identifiable information. In accordance with the FDA regulations governing new drug applications, the aggregate tapes will be retained for at least two years after FDA approves the new drug applications or the IND is withdrawn. At that time, the tapes will be retired to the Federal Records Center and destroyed when they are five years old or when they are no longer needed for research purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Regulatory Affairs Branch, Division of Treatment Research and Development, National Institute on Drug Abuse (NIDA), Neuroscience Center, Room 4123, 6001 Executive Boulevard, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

An individual may determine if a record exists about himself/herself upon written request, with notarized signature if request is made by mail, or with suitable identification if request is made in person, to the appropriate system manager at the address above. The following information should be included, if known: subject-participant's full name and a letter of request with notarized signature of the subject-participant of the record, any alias used, subject-participant's identification number, name of the researcher, name of clinic or research center, name of substance, and approximate date of study participation.

An individual who requests notification of a medical record must, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Research subject-participants, staff in the participating drug abuse treatment programs, written clinical evaluations, private physicians, counselors, psychiatrists, psychotherapists, family members, research assistants, and hospital records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0210

SYSTEM NAME:

Shipment Records of Drugs of Abuse to Authorized Researchers, HHS/NIH/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Chemistry and Physiological Systems Research Branch (CPSRB), Division of Neuroscience and Behavioral Research, National Institute on Drug Abuse (NIDA), Neuroscience Center, Room 4282, 6001 Executive Boulevard, Bethesda, MD 20892–9555.

Research Triangle Institute, Research Triangle Park, NC 27709.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual researchers and organizations who are registered with the Drug Enforcement Administration (DEA), Department of Justice (DOJ), some since 1966, and who have voluntarily submitted documentation to the National Institute on Drug Abuse (NIDA) in order to obtain, through the NIDA Drug Supply Program (DSP), drugs of abuse for use in a research project.

CATEGORIES OF RECORDS IN THE SYSTEM:

While the records in this system are research project-related, they support the eligibility of individual researchers to receive drugs of abuse. Types of information contained in the records are: researcher's name, curricula vitae, research protocol, DEA and (if applicable) Nuclear Regulatory Commission registration numbers (when a radio labeled compound is requested and shipped), business address (location of research project) and telephone number, summary of research project(s), requests for substance(s), name and amount of each compound requested and shipped, dates material is shipped and received, shipment numbers, and order form numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, sections 301, and 405 (42 U.S.C. 241 and 284); Controlled Substances Act of 1970 (21 U.S.C. 801 *et seq.*); Atomic Energy Act of 1954, as amended, section 81 (42 U.S.C 2111); and Energy Reorganization Act of 1974, section 201 (42 U.S.C. 5841).

PURPOSE(S):

To facilitate operation of DSP which is a centralized research support service through which the United States Government supplies to the national and international scientific community for research purposes, most Schedule I and many Schedule II–V controlled and noncontrolled substances as specified in the Controlled Substances Act (CSA) of 1970 (21 U.S.C. 801 *et seq.*). Controlled substances are chemicals and other substances, and their immediate precursors, that the Attorney General has determined to have such potential for abuse as to warrant regulation under the CSA. Some of these substances are radio labeled materials. Radio labeled materials are substances to which a small amount of radioactivity is added for use in various studies, such as drug metabolism and mechanisms of drug actions.

This system of records was established to facilitate DSP by enabling NIDA:

1. To verify that requests for drugs of abuse, some of which are radio labeled, are from authorized individuals/organizations for use in a research project;

2. To verify that the amounts of the materials requested by researchers for animal, in vivo, and in vitro research are justified and available;

3. To supply controlled substances in amounts approved by the Food and Drug Administration (FDA) to researchers conducting research with human subjects;

4. To ship these materials securely in accordance with CSA and the Atomic Energy Act; and

5. To maintain records of these transactions.

FDA also may use the records in routine inspections in accordance with FDA's responsibilities to develop standards on the composition, safety, and efficacy of drugs administered to humans, and to monitor experimental usage of drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. We may disclose the record of an individual to a congressional office in response to a verified inquiry from the congressional office made at the written request of the individual.

2. We may disclose information to DEA, DOJ, to enable DEA to carry out its responsibilities as described in the Controlled Substances Act of 1970.

3. An NIH contractor routinely uses the records in this system to ship controlled substances to authorized recipients. Such contractor is required to maintain Privacy Act safeguards with respect to these records.

4. An NIH contractor may have access to the records in this system in the performance of its software modification/correction tasks specified in its contract. Such contractor is required to maintain Privacy Act safeguards with respect to these records.

5. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) 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 (d) 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 litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

NIDA maintains ''hard copy'' records in file folders and automated records on computer disk.

RETRIEVABILITY:

Authorized NIDA and contractor personnel index and retrieve the computerized records by a researcher code number assigned by a computer program at the time a new record is established. Authorized NIDA personnel index and retrieve ''hard copy'' records by researcher's name. NIDA maintains a computerized, alphabetical cross-reference list that matches names and numbers.

SAFEGUARDS:

1. *Authorized Users:* The Chief, CPSR Branch and his or her support staff, program assistant and clerk-typist, and the contracts' project directors and their support staffs have access to the records.

2. *Physical Safeguards:* The ''hard copy'' records and main computer are physically located at the Neuroscience Center, Bethesda, Maryland. The computerized records are kept in a room with limited admittance. The room is locked after working hours. The ''hard copy'' records are stored in locked file cabinets in a room with very limited admittance. This room is also locked after working hours. The Neuroscience Center has a 24-hour guard patrol service.

3. *Procedural Safeguards:* The terminals are housed in a secured work area with limited admittance. Contract personnel use a password identification system to obtain access; NIDA changes the passwords periodically.

4. *Implementation Guidelines:* These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

NIDA maintains an individual's record for five years after the researcher's last request for, or shipment of, a drug of abuse. We consider the record inactive after that, and erase it from the computer disk by a delete routine. The delete routine automatically deletes the computerized cross-reference as well. We destroy the ''hard copy'' record by shredding. The system is checked once a year for inactive records.

SYSTEM MANAGER(S) AND ADDRESS:

Program Director, Drug Supply Program, Chemistry and Physiological Systems Research Branch, Division of Neuroscience and Behavioral Research, National Institute on Drug Abuse (NIDA), Neuroscience Center, Room 4282, 6001 Executive Boulevard, Bethesda, MD 20892–9555.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. An individual may learn if a record exists about himself or herself upon written request. The request should include the researcher's name and business address at the time of last shipment. The request must be signed in ink by the individual researcher. Verifiable proof of identity is required.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Initial source is the individual researcher. Some of the DEA registration information provided by a researcher is verified through a DEA computer check. FDA provides information concerning type and amount of controlled substance(s) to be shipped to an individual researcher for research projects involving human subjects.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0211

SYSTEM NAME:

Intramural Research Program Records of In- and Out-Patients with Various Types of Alcohol Abuse and Dependence, Relatives of Patients with Alcoholism, and Healthy Volunteers, HHS/NIH/NIAAA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A list of specific project sites is available from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In- and out-patients with alcohol abuse and dependence, alcohol-induced organic brain syndromes; their relatives; and healthy volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Research data of wide variety including biochemical measures, psychophysiological and psychological tests, questionnaires, clinical and behavioral observations and interviews, physical examinations, and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, as amended, sections 301 (42 U.S.C. 241) and 510 (42 U.S.C. 290bb). These sections authorize the conduct of general health research and research into alcoholism and alcohol abuse.

PURPOSE(S):

These records are used for diagnosis and treatment of patients with alcohol abuse and dependence and related conditions; behavioral research relating to the causes, diagnoses, and treatment of addictions; and basic research on behavioral and biological processes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system are covered by section 527 of the Public Health Service Act (42 U.S.C. 290ee-3) and 42 CFR, chapter I, subchapter A, part 2, on confidentiality of alcohol and drug abuse patient records. In accordance with these regulations, the records are confidential and may only be disclosed with the written consent of the patient with specific restrictions, and without the patient's consent in the following instances: (1) To medical personnel to the extent necessary to meet a bona fide emergency; (2) to qualified personnel for the purpose of conducting scientific research; or (3) if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore, after certain considerations, and with appropriate safeguards. Routine uses of information in this system are limited to the following:

1. A record may be disclosed for a research purpose, when the Department: (a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) Has determined that the research purpose: (1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (c) has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; (d) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office at the written request of that individual, in accordance with 42 CFR, chapter I, subchapter A, part 2. Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for PHS who do not technically have the status of agency employees, if they need the records in the performance of their agency functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, on index cards, computer tapes and disks, microfiche, microfilm and audio and video tapes. Normally the factual data, with study code numbers, are stored on computer tape or disk, while the key to personal identifiers is stored separately, without factual data, in paper files.

RETRIEVABILITY:

During data collection stages and followup, retrieval by personal identifier (e.g., name or medical record number) is necessary. During the data analysis stage, data are normally retrieved by variables of interest, e.g., age, diagnosis, etc.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for the particular records maintained in each project. Depending on the sensitivity of the project, additional safeguards may be added.

1. *Authorized Users:* Only NIAAA medical and research staff have access to these records, as authorized by the system manager.

2. *Physical Safeguards:* Records are stored in locked rooms, locked file cabinets, and/or secured computer facilities. Personal identifiers and link codes are separated as much as possible and stored in locked files.

3. *Procedural Safeguards:* Collection and maintenance of data are consistent with legislation and regulations for protection of human subjects, informed consent, confidentiality, and confidentiality specific to drug and alcohol abuse patients. Computer data access is limited through the use of key words, a series of account numbers, and passwords which are changed frequently and known only to authorized personnel.

4. *Implementation Guidelines:* These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are held for five years after completion of the project, retired to a Federal Records Center, and subsequently disposed of after ten years.

SYSTEM MANAGER(S) AND ADDRESS:

Clinical Director, Laboratory of Clinical Studies, Division of Intramural Clinical and Biological Research, National Institute on Drug Abuse (NIDA), Building 10, Room 3B–19, 10 Center Drive, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. Provide notarized signature as proof of identity. The request should include as much of the following information as possible: (a) Full name; (b) nature of illness (if any); (c) title of study; (d) name of researcher conducting study. An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of child's/incompetent

person's record shall at the time the request is made designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The designee will receive the record in all cases and upon review will determine whether the record should be made available to the parent or guardian.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information gathered from individuals under study, either patient or normal subject, contract surveys, hospital records, medical and nursing staff notes, and from Privacy Act system of records 09–25–0099, ''Clinical Research: Patient Medical Records, HHS/NIH/CC.''

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0213

SYSTEM NAME:

Administration: Employee Conduct Investigative Records, HHS/NIH/OD/OM/OA/OMA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Management Assessment, Office of Administration, Office of Management, Office of the Director (OD), 6011 Executive Boulevard, Room 601, Bethesda, MD 20892–7669.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are alleged or suspected to have violated NIH or Departmental regulations or Federal statutes and are: personnel employed by the Federal Government who are under a career, career conditional, or other type of appointment; personnel working under Intergovernmental Personnel Act assignments; Guest Researchers; Volunteers; Individuals on Temporary Appointments (including student appointments); Fogarty International Center Scholars; Staff Fellows; Intramural Research Training Award Fellows; IC Fellowship Award Recipients; Visiting Associates, Scientists, and Fellows; Commissioned Corps; individuals who receive funding through or have responsibility for NIH sponsored grants, contracts, or cooperative agreements and other individuals who transact or seek to transact business with NIH or HHS or use the facilities of those agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes records relating to correspondence concerning an individual's employment status or conduct while employed by or working at NIH. Examples of these records include: Correspondence from employees, members of Congress and members of the public alleging misconduct by an official of NIH. It also contains reports of investigations to resolve allegations of misconduct or violations of statutes, with related exhibits of statements, affidavits or records obtained during the investigation; reports of action taken by management; decisions on any misconduct substantiated by the investigation; and reports of legal action resulting from violations of statutes referred for prosecution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 302; 42 U.S.C. 203, 282; 44 U.S.C. 3101; E.O. 10450

PURPOSE(S):

To document reviews and investigations undertaken by the Office of Management Assessment, NIH to provide management or the Office of Inspector General, Office of the Secretary, HHS with information needed to take action to resolve complaints of misconduct or alleged violations of statutes, regulations, policies, or the terms and conditions of funding.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made 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, if the disclosure does not compromise the investigative activities of the Office of Management Assessment.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

3. Disclosure may be made to a court or adjudicative body in a proceeding 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 agency has agreed to represent the employee; or (d) the United states Government, is a party to the proceeding or has an interest in such proceeding, and by careful review, the agency determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

4. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutorial responsibility of the receiving entity.

5. Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of any portion of this system of records that contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure

will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

6. Disclosure may be made to Federal, State, local or foreign agency maintaining, civil, criminal, or other relevant enforcement records, or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an investigation concerning the retention of an employee or other personnel action, the issuance or retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

7. Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department is authorized to make such records available.

8. Disclosure may be made to agency contractors, experts, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

9. Disclosure may be made in the course of employee discipline or competence determination proceedings.

10. Disclosure may be made to representatives of an awardee of an NIH grant, contract, or cooperative agreement that is the subject of an investigation by Office of Management Assessment, NIH.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper forms in file folders, file cards, magnetic tapes, magnetic disks, optical disks and/or other types of data storage devices.

RETRIEVABILITY:

Records are retrieved by a unique classification number; name of the victim, accused, or complainant, date of birth, social security number; and by the nature of the incident and/or time of occurrence.

SAFEGUARDS:

1. *Authorized Users:* Data on computer files is accessed by keyword known only to authorized users who are Office of Management Assessment employees or contractor staff who have a need for the data in the performance of their duties as determined by the system manager.

2. *Physical Safeguards:* Access to the restricted office area containing the rooms where records are stored is controlled through the use of door locks. Only authorized users have the keys to these locks. During regular business hours, rooms in this restricted area are unlocked but entry is controlled by on-site personnel. Rooms where records are stored are locked when not in use. Individually identifiable records are kept in locked file cabinets or in locked rooms under the direct control of the system manager or his/her delegated representatives.

3. *Procedural and Technical Safeguards:* Computer records are accessible only through a series of code or keyword commands available from and under direct control of the system manager or his/her delegated representatives. These records are secured by a multiple-level security system which is capable of controlling access to the individual data field level. Persons having access to the computer database can be restricted to a confined application which permits only a narrow ''view'' of the data. All authorized users of personal information in connection with the performance of their jobs (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised area/office. These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, supplementary Chapter PHS hf: 45–13, the Department's Automated Information Systems Security Program Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361): item 1700–A–4, which allows records to be kept permanently when involving extensive litigation; five years for minor infractions or improprieties when final recommendation is that no action be taken, or 20 years for all other. Refer to the NIH Manual Chapter for specific retention and disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Management Assessment, Office of Administration, Office of Management, Office of the Director (OD), 6011 Executive Boulevard, Room 601, MSC 7669, Bethesda, Maryland 20892–7669.

NOTIFICATION PROCEDURE:

This system is exempt from the notification requirements. However, consideration will be given to requests addressed to the system manager listed above. The requestor must verify his or her identity by providing either a notarization of the request or a written certification that the requestor is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. The request should include: (a) Full name, (b) address, and, (c) year of records in question.

RECORD ACCESS PROCEDURE:

This system is exempt from the access requirements. However, consideration will be given to requests addressed to the System Manager listed above. The requestor must verify his or her identity by providing either a notarization of the request or a written certification that the requestor is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. The request should include: (a) full name, (b) address, and, (c) year of records in question. Requesters should also reasonably specify the record contents being sought. Although the system is exempt, individuals may, upon request, receive records from this system and an accounting of disclosure of their records, if the system manager determines that disclosure would not compromise the investigative activities of the Office of Management Assessment, NIH.

CONTESTING RECORD PROCEDURE:

Exempt. However, consideration will be given requests addressed to the System Manager. Requests for corrections should reasonably identify the record and specify the information being contested, and state the corrective action sought with supporting information. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Departmental and other Federal, State, and local government records; subjects of investigations, complaints, witnesses; documents and other material furnished by non-government sources; and personal observations by the investigator.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act from the access, notification, correction, and amendment provisions of the Privacy Act (5 U.S.C. 552a(c)(3), (d)(1)–(4), (e)(1), (e)(4)(G) and (H) and (f)), because it consists of investigatory material compiled for law enforcement purposes. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, thereby allowing them time to take measures to prevent detection of illegal action or to escape prosecution. Disclosure of investigative techniques/procedures and the existence and identity of confidential sources of information could jeopardize investigative activities. However, any individual who has been denied any right, privilege, or benefit for which he/she would otherwise be entitled or be eligible, as a result of the maintenance of such material, will be given access to the material, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of such source would be held in confidence. The system is also exempted from (k)(5) of the Privacy Act in order to allow the agency to exempt from individual access, investigatory materials compiled for the purpose of determining suitability, eligibility, or qualification for federal employment or financial assistance if release of the material would disclose the identity of a confidential source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

09–25–0216

SYSTEM NAME:

Administration: NIH Electronic Directory, HHS/NIH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are maintained in databases located within the NIH computer facilities and the files of NIH functional offices required to identify individuals in order to manage the federal resources and authorities assigned to them. A current list of sites, including the address of any Federal Records Center where records from this system may be stored, is available by writing the system manager listed under Notification Procedure below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of NIH resources and services including but not limited to: current and past NIH employees, contractors, tenants of NIH facilities, participants in the NIH visiting programs, registered users of NIH computer facilities, grantees, reviewers, council members, collaborators, vendors, and parking permit holders. This system does not cover patients and visitors to the NIH Clinical Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is a source system that provides identification data to a variety of directory services at NIH that share comparable information and assign or relate dedicated federal resources to individuals. This system provides for a central directory that allows NIH to manage NIH corporate business processes and electronic commerce. The types of personal information in this directory are necessary to ensure the accurate identification of individuals doing business in or with the National Institutes of Health. The types of personal information included in this directory are: Name, alias names, date of birth, place of birth, social security number, gender, home address, home phone number, home FAX number, personal pager number, personal mobile phone number, personal email address, emergency contacts, photograph, digitized written signature, digitized biometrics, and NIH-assigned unique identifier. Public data refers to non-sensitive information readily available to the general public (*e.g.*, name, building, room number, and work phone). Non-public data refers to sensitive/confidential information or data for which access is limited to appropriate staff with a valid need-to-know in the performance of their official job duties, or as outlined in the routine uses for disclosure (*e.g.*, social security number, gender, home address, date of birth, place of birth).

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):

The purpose is to establish a consolidated and centrally coordinated electronic directory to support e-government of administrative business processes; allow effective controls over the creation, maintenance and use of records in the conduct of current business; provide for effective management of costs, operation and interconnectivity of NIH information systems; provide the required structure for network security; and provide an accurate source of directory information at the NIH. Data collected is used to build an NIH centralized source identification directory and provides for directory security system authentication and authorization and supports NIH corporate business processes and electronic commerce. This system of records enables NIH to reliably identify individuals and those federal resources assigned to them. A NIH unique identifier (UID) will be assigned to each individual to permit identification of a single person with their descriptive information and resources throughout their career.

This system allows for the creation of accurate records for individuals in the NIH directory and ensures that duplicate data files are compared, corrected and combined for accuracy, thus eliminating redundancy. It is the central point of coordination for other automated systems that manage or track resources, particularly information security systems.

INTERNAL USE AND ACCESS TO PERSONAL INFORMATION

Internal use and access to the personal information in this system will be limited to those with a valid need-to-know in the performance of their official duties. Typical internal uses of the system, including categories of users, uses of the data collected and the need for such use are as follows:

1. Trans-NIH Human Resource Personnel, Administrative Officers, and administrative technicians, will access all public and non-public records for employees and/or NIH affiliates within their scope of responsibility to access/track staffing information such as personal/work contact information, physical location, and/or any other information to facilitate current NIH administrative business processes.

2. Information Resources Management staff and Space and Facility Management personnel will have access to view public data (building location and work phone information) to coordinate access for, and the allocation of, telecommunication resources and building space/access.

3. Supervisors, Administrative Officers and Administrative

Technicians will have access to emergency contact information to enable them to contact someone in the event of an emergency.

4. NIH central services staff, NIH police, and NIH management will access both public and non-public data to coordinate/track employee data required for other NIH business processes such as card key access, ID badges, parking permits, library resources, census information gathered for reporting requirements, employee development, training, campus security, and other administrative processes.

5. NIH Security Officers, or other incident response personnel will have access to public/non-public data where NIH deems it necessary for official investigations or security incidents involving suspected intrusion, illegal activity, or unauthorized/unethical misuse of the system of records or data therein.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the records of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

3. Disclosure may be made to agency contractors, experts, consultants, or volunteers who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients are required to maintain Privacy Act safeguards with respect to these records.

4. Disclosure may be made to respond to a Federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a security clearance, grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter.

5. Disclosure may be made to the Department of Justice, or to a court or other adjudicative body, from this system of records when (a) HHS, or any component thereof; or (b) any HHS officer or employee in his or her official capacity; or (c) any HHS officer or 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 officer or employee; or (d) the United States or any agency thereof where HHS determines that the proceeding is likely to affect HHS or any of its components, is a party to the proceeding or has any interest in the proceeding, and HHS determines that the records are relevant and necessary to the proceeding and would help in the effective representation of the governmental party.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media such as computer tape and disk and/or hard-copy. Automated records are stored in controlled computer areas. Both manual and computerized records will be maintained in accordance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records'', supplementary Chapter PHS hf: 45–13, and the Department's Automated Information System Security Program Handbook.

RETRIEVABILITY:

Records are indexed and retrieved by: name, unique identifier, alias names, and social security number.

SAFEGUARDS:

1. *Authorized Users:* Non-public data on computer files is accessed by keyword known only to authorized users who are NIH employees or contractor staff who have a legitimate operational responsibility to access the data in the performance of their duties as determined by the System Manager. Staff are only granted access to those directories or fields for which they have operational responsibilities. User activity is recorded. Occurrences of non-routine user or operator activity are recorded. Public data is controlled by user-defined view via a web-based look-up table. View of public data is accessible and controlled via the NIH network.

2. *Physical Safeguards:* Physical access to the computer systems where records are stored is controlled through the use of door locks and alarms.

3. *Procedural and Technical Safeguards:* Access to the non-public data will be controlled through: password protection, user authentication, and system administration procedures for user access. User name and password authentication procedures are in place to protect non-public data from public view, and to prevent unauthorized personnel from accessing data. Logical access controls, based on job function, are in place to authorize and/or restrict the user activity and view of the data. Persons having access to data are restricted to a field-by-field confined user interface that permits a controlled, or narrow ''view'' of the data. Sensitive data transferred between NIH source databases is secured through encryption or similar manner. Digital certificates and automated user audit trail capabilities have been incorporated to ensure data integrity and to detect evidence of data tampering.

These practices are in compliance with standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records'', supplementary Chapter PHS hf: 45–13, and the Department's Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records may be retired to a Federal Records Center and subsequently disposed of in accordance with the NIH Records Control Schedule. The Records Control Schedule and disposal standard for these records may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Chiquita Bennett, Clinical Center (CC), Building 10, Room 1C280, 10 Center Drive, Bethesda, MD 20892.

Ann Ellis, Clinical Center (CC), Building 10, Room B1L410B, 10 Center Drive, Bethesda, MD 20892.

Edith Smith, Center for Information Technology (CIT), Fernwood Building, Room 2NW06F, Bethesda, MD 20892.

Maria Miller, Center for Information Technology (CIT), Fernwood Building, Room 2NW06E, Bethesda, MD 20892.

Nadel Griffith, Center for Scientific Review (CSR), Democracy Plaza I, Room 3028, 6701 Rockledge Drive, Bethesda, MD 20892.

Marilyn Cuzzolina, Center for Scientific Review (CSR), Democracy Plaza I, Room 3028, 6701 Rockledge Drive, Bethesda, MD 20892.

Sharon Nieberding, Office of Administrative Management and International Services, Fogarty International Center (FIC), Building 31, Room B2C08, 31 Center Drive, Bethesda, MD 20892–2220.

Allison Wise, Office of Administrative Operations, National Center for Complementary and Alternative Medicine (NCCAM), Building 31, Room 2B11, 31 Center Drive, Bethesda, MD 20892–2182.

Mike Tucker, National Cancer Institute (NCI), 6116 Executive Boulevard, Room 609, Bethesda, MD 20892.

Mike Floyd, National Cancer Institute (NCI), 6116 Executive Boulevard, Room 609, Bethesda, MD 20892.

Dorothy Keys, National Center for Research Resources (NCRR), Rockledge I, Room 6070, 6705 Rockledge Drive, Bethesda, MD 20892.

Matthew Burr, National Eye Institute (NEI), Building 31, Room 6A19, 31 Center Drive, Bethesda, MD 20892.

Patricia Hylla, National Human Genome Research Institute (NHGRI), Building 49, Room 3A38, 49 Convent Drive, Bethesda, MD 20892.

Christina Roark, National Heart, Lung, and Blood Institute (NHLBI), Democracy Plaza I, Room 7021, 6701 Rockledge Drive, Bethesda, MD 20892–7921.

Agnes Slamen, National Institute on Aging (NIA), Gerontology Research Center, Johns Hopkins Bayview Campus, 5600 Nathan Shock Drive, Room 1E14A, Baltimore, MD 21224.

Gwen Proctor, National Institute on Aging (NIA), Gerontology Research Center, Johns Hopkins Bayview Campus, 5600 Nathan Shock Drive, Room 1E14A, Baltimore, MD 21224.

Andrea Hobbs, National Institute of (NIAAA), Building 31, Room 1B40, 31 Center Drive, Bethesda, MD 20892.

Lennita Lawson, National Institute of Allergy and Infectious Disease (NIAID), Building 31, Room 7A19, 31 Center Drive, Bethesda, MD 20892.

Kai Lakeman, National Institute of Allergy and Infectious Disease (NIAID), Building 31, Room 7A19, 31 Center Drive, Bethesda, MD 20892.

Andrea Ricche, National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), Natcher Building, Room 5AS51, 45 Center Drive, Bethesda, MD 20892.

Ruby Akomeah, National Institute of Biomedical Imaging and Bioengineering (NIBIB), Building 31, Room 1B37, 31 Center Drive, Bethesda, MD 20892.

Ivelisse Rodriguez, National Institute of Biomedical Imaging and Bioengineering (NIBIB), Building 31, Room 1B37, 31 Center Drive, Bethesda, MD 20892.

Ruth Maraio, National Institute of Child Health and Human Development (NICHD), Rockledge I, Room 800, 6705 Rockledge Drive, Bethesda, MD 20892.

Donna Tolson, National Institute of Drug Abuse (NIDA), Neuroscience Center, Room 512, 6001 Executive Boulevard, Bethesda, MD 20892.

Anne Sumner, National Institute on Deafness and Other Communication Disorders (NIDCD), Building 31, Room 3C21, 31 Center Drive, Bethesda, MD 20892.

Kathleen Maguire, National Institute of Dental and Craniofacial Research (NIDCR), Natcher Building, Room 4AN12, 45 Center Drive, Bethesda, MD 20892.

Anne Robertson, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), Democracy Plaza II, Room 909, 6707 Democracy Boulevard, Bethesda, MD 20892.

Linda Mongelli, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), Building 10, Room 9N208, 10 Center Drive, Bethesda, MD 20892.

Donna Byrd, National Institute of Environmental Health Sciences (NIEHS), PO Box 12233, Research Triangle Park, NC 27709.

Gail Grosman, National Institute of General Medical Sciences (NIGMS), Natcher Building, Room 3AN32, 45 Center Drive, Bethesda, MD 20892.

Crystal James, National Institute of General Medical Sciences (NIGMS), Natcher Building, Room 3AS25A, 45 Center Drive, Bethesda, MD 20892.

Pam Fitzgerald, National Institute of Mental Health (NIMH), Building 31, Room 2B34, 31 Center Drive, Bethesda, MD 20892.

Vicki Dobbins, National Institute of Medical Health (NIMH), Building 31, Room 2B34, 31 Center Drive, Bethesda, MD 20892–9657.

Debbie Jarman, Privacy Act Coordinator, National Institute of Neurological Disorders (NINDS), Building 31, Room 8A33, 31 Center Drive, Bethesda, MD 20892.

Ana Ferreira, National Institute of Nursing Research (NINR), Building 31, Room 5B19A, 31 Center Drive, Bethesda, MD 20892.

Patricia Williams, National Library of Medicine (NLM), Building 38, Room 2W05, 8600 Rockville Pike, Bethesda, MD 20894.

Sandy Freund, Office of the Director (OD), 6011 Executive Boulevard, Room 325, Bethesda, MD 20892.

Dinah Huffer, Office of Research Services (ORS), Building 31, Room 4B30, 31 Center Drive, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager listed above. The requester must verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand-dollar fine. The request should include: (a) Full name, and (b) address, and (c) year of records in question.

RECORD ACCESS PROCEDURE:

Write to the System Manager specified above to attain access to records and provide the same information as is required under the Notification Procedures. Requester should also reasonably specify the record content being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURE:

Address a petition for amendment to the System Manager. All requests must be in writing. The individual must identify himself/herself, specify the system of records from which the records are retrieved, the particular records to be corrected or amended, whether seeking an addition to or a deletion or substitution for the records, and the reason for requesting correction or amendment of the record.

RECORD SOURCE CATEGORIES:

NIH employees, contractors, and other persons who are using or performing services on behalf of the NIH, and the NIH human resource databases (i.e., Human Resource Database (HRDB), Fellowship Payment System (FPS), J.E. Fogarty Database of Foreign Visiting Scientists (JEFIC), NIH Telecommunications Database (TELCOM), Parking and Identification Database (PAID), E-mail Directory and Forwarding Service (PH directory), and the Integrated Time and Attendance System (ITAS)).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–23965 Filed 9–25–02; 8:45 am]

BILLING CODE 4140–01–P

Federal Register

Thursday,
September 26, 2002

Part IV

Office of Personnel Management

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions; Notice

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives a consolidated notice of all positions excepted under Schedules A, B, and C as of June 30, 2002, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. Title 5, Code of Federal Regulations, section 213.103(c), further requires that a consolidated listing, current as of June 30 of each year, be published annually as a notice in the **Federal Register**. That notice follows. OPM maintains continuing information on the status of all Schedule A, B, and C excepted appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by writing to the Employment Service, Room 6500, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, or by calling (202) 606–6500.

The following exceptions were current on June 30, 2002:

Schedule A

Section 213.3102 Entire Executive Civil Service

(a) Positions of Chaplain and Chaplain's Assistant.

(b) (Reserved).

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment that was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) Chinese, Japanese, and Hindu interpreters.

(g) Any nontemporary position the duties of which are part-time or intermittent in which the appointee will receive compensation during his or her service year that aggregates not more than 40 percent of the annual salary rate for the first step of grade GS–3. This limited compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority may not be for temporary project employment.

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Temporary and less-than-full time positions for which examining is impracticable. These are:

(1) Positions in remote/isolated locations where examination is impracticable. A remote/isolated location is outside of the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing examining office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the same agency under a combination of this and any other appointment to positions involving related duties and requiring the same qualifications for more than 1,040 working hours in a service year. Temporary appointments under this authority may be extended in 1-year increments, with no limit on the number of such extensions, as an exception to the service limits in § 213.104.

(2) Positions for which a critical hiring needs exists. This includes both short-term positions and continuing positions that an agency must fill on an interim basis pending completion of competitive examining, clearances, or other procedures required for a longer appointment. Appointments under this authority may not exceed 30 days and may be extended up to an additional 30 days if continued employment is essential to the agency's operations. The appointments may not be used to extend the service limit of any other appointing authority. An agency may not employ the same individual under this authority for more than 60 days in any 12-month period.

(3) Other positions for which OPM determines that examining is impracticable.

(j) Positions filled by current or former Federal employees eligible for placement under special statutory provisions. Appointments under this authority are subject to the following conditions:

(1) *Eligible employees.* (i) Persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) who are entitled to placement under § 353.110 of this chapter, or who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 5 U.S.C. 8456 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment;

(ii) Executive branch employees (other than employees of intelligence agencies) who are entitled to placement under § 353.110 but who are not eligible for reinstatement or noncompetitive appointment under the provisions of part 315 of this chapter.

(iii) Legislative and judicial branch employees and employees of the intelligence agencies defined in 5 U.S.C. 2302(a)(2)(C)(ii) who are entitled to placement assistance under § 353.110.

(2) *Employees excluded.* Employees who were last employed in Schedule C or under a statutory authority that specified the employee served at the discretion, will, or pleasure of the agency are not eligible for appointment under this authority.

(3) *Position to which appointed.* Employees who are entitled to placement under § 353.110 will be appointed to a position that OPM determines is equivalent in pay and grade to the one the individual left, unless the individual elects to be placed in a position of lower grade or pay. National Guard Technicians whose eligibility is based upon a disability may be appointed at the same grade, or equivalent, as their National Guard Technician position or at any lower grade for which they are available.

(4) *Conditions of appointment.* (i) Individuals whose placement eligibility is based on an appointment without time limit will receive appointments without time limit under this authority. These appointees may be reassigned, promoted, or demoted to any position

within the same agency for which they qualify.

(ii) Individuals who are eligible for placement under § 353.110 based on a time-limited appointment will be given appointments for a time period equal to the unexpired portion of their previous appointment.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, and technical experts for consultation purposes.

(m) (Reserved).

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p)–(q) (Reserved).

(r) Positions established in support of fellowship and similar programs that are filled from limited applicant pools and operate under specific criteria developed by the employing agency and/or a non-Federal organization. These programs may include: internship or fellowship programs that provide developmental or professional experiences to individuals who have completed their formal education; training and associateship programs designed to increase the pool of qualified candidates in a particular occupational specialty; professional/industry exchange programs that provide for a cross-fertilization between the agency and the private sector to foster mutual understanding, an exchange of ideas, or to bring experienced practitioners to the agency; residency programs through which participants gain experience in a Federal clinical environment; and programs that require a period of Government service in exchange for educational, financial or other assistance. Appointment under this authority may not exceed 4 years.

(s) Positions with compensation fixed under 5 U.S.C. 5351–5356 when filled by student-employees assigned or attached to Government hospitals, clinics or medical or dental laboratories. Employment under this authority may not exceed 4 years.

(t) Positions when filled by mentally retarded persons in accordance with the guidance in Federal Personnel Manual chapter 306. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(u) Positions when filled by severely physically handicapped persons who: (1) Under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or (2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(v)–(w) (Reserved).

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed 1 additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) (Reserved).

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of OPM except when the authority is specifically included in a delegated examining agreement with OPM.

(cc)–(ee) (Reserved).

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Public Law 91–452 and related statutes. A person appointed under this authority may continue to be employed under it after he/she ceases to be in a qualifying program only as long as he/she remains in the same agency without a break in service.

(gg)–(hh) (Reserved).

(ii) Positions of Presidential Intern, GS–9 and 11, in the Presidential Management Intern Program. Initial appointments must be made at the GS–9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to 1 additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive order 12364, in accordance with requirements published in the Federal Personnel Manual.

(jj–kk) (Reserved).

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

Section 213.3103 Executive Office of the President

(a) *Office of Administration.* (1) Not to exceed 75 positions to provide administrative services and support to the White House office.

(b) *Office of Management and Budget.* (1) Not to exceed 15 positions at grades GS–5/15.

(c) *Council on Environmental Quality.* (1) Professional and technical positions in grades GS–9 through 15 on the staff of the Council.

(d)–(f) (Reserved).

(g) *National Security Council.* (1) All positions on the staff of the Council.

(h) *Office of Science and Technology Policy.* (1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) *Office of National Drug Control Policy.* (1) Not to exceed 15 positions, GS–15 and below, of senior policy analysts and other personnel with

expertise in drug-related issues and/or technical knowledge to aid in anti-drug abuse efforts.

Section 213.3104 Department of State

(a) *Office of the Secretary.* (1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Director General of the Foreign Service and the Director of Personnel, Office of the Under Secretary for Management.

(2) One position of Museum Curator (Arts), in the Office of the Under Secretary for Management, whose incumbent will serve as Director, Diplomatic Reception Rooms. No new appointments may be made after February 28, 1997.

(b) *American Embassy, Paris, France.* (1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c)–(f) (Reserved).

(g) *Bureau of Population, Refugees, and Migration.* (1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the Bureau.

(h) *Bureau of Administration.* (1) One Presidential Travel Officer. No new appointments may be made under this authority after June 11, 1981.

(2) One position of the Director, Art in Embassies Program, GM–1001–15.

Section 213.3105 Department of the Treasury

(a) *Office of the Secretary.* (1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(3) Not to exceed 50 positions in the Office of the Under Secretary (Enforcement).

(b) *U.S. Customs Service.* (1) Positions in foreign countries designated as ''interpreter-translator'' and ''special employees,'' when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2)–(5) (Reserved).

(6) Three hundred positions of Criminal Investigator for special assignments and 10 positions for oversight policy and direction of sensitive law enforcement activities.

(7)–(8) (Reserved).

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(c) (Reserved).

(d) *Office of Thrift Supervision.* (1) All positions in the supervision policy and supervision operations functions of OTS. No new appointments may be made under this authority after December 31, 1993.

(e) *Internal Revenue Service.* (1) Twenty positions of investigator for special assignments.

(f) (Reserved).

(g) Bureau of Alcohol, Tobacco, and Firearms. (1) One hundred positions of criminal investigator for special assignments.

(2) One non-permanent Senior Level (SL) Criminal Investigator to serve as a senior advisor to the Assistant Director (Firearms, Explosives, and Arson).

Section 213.3106 Department of Defense

(a) *Office of the Secretary.* (1)–(5) (Reserved).

(6) One Executive Secretary, US–USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).*

(1) Professional positions in Military Dependent School Systems overseas.

(2) Positions in attaché 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the staffs of the chaplains in the military services.

(5) Positions under the program for utilization of alien scientists, approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense, when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the Department of Defense when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or separation of a dependent's sponsor: *Provided,* that (i) a school employee may be permitted to complete the school year; and (ii) an employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Twenty secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1,040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR Part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(c) (Reserved).

(d) *General.* (1) Positions concerned with advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the

applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) *Uniformed Services University of the Health Sciences.*

(1) Positions of President, Vice Presidents, Assistant Vice Presidents, Deans, Deputy Deans, Associate Deans, Assistant Deans, Assistants to the President, Assistants to the Vice Presidents, Assistants to the Deans, Professors, Associate Professors, Assistant Professors, Instructors, Visiting Scientists, Research Associates, Senior Research Associates, and Postdoctoral Fellows.

(2) Positions established to perform work on projects funded from grants.

(f) *National Defense University.* (1) Not to exceed 16 positions of senior policy analyst, GS–15, at the Strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) *Defense Communications Agency.* (1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) *Defense Acquisitions University.* (1) The Provost and professors.

(i) *George C. Marshall European Center for Security Studies, Garmisch, Germany.*

(1) The Director, Deputy Director, and positions of professor, instructor, and lecturer at the George C. Marshall European Center for Security Studies, Garmisch, Germany, for initial employment not to exceed 3 years, which may be renewed in increments from 1 to 2 years thereafter.

(j) *Asia-Pacific Center for Security Studies, Honolulu, Hawaii.* (1) The Director, Deputy Director, Dean of Academics, Director of College, deputy department chairs, and senior positions of professor, associate professor, and research fellow within the Asia Pacific Center. Appointments may be made not to exceed 3 years and may be extended for periods not to exceed 3 years.

Section 213.3107 Department of the Army

(a)–(c) (Reserved).

(d) *U.S. Military Academy, West Point, New York.* (1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, Chapel Organist and Choir-Master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, coaches, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and librarian when filled by an officer of the Regular Army retired from active service, and the military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e)–(f) (Reserved).

(g) *Defense Language Institute.* (1) All positions (professors, instructors, lecturers) which require proficiency in a foreign language or a knowledge of foreign language teaching methods.

(h) *Army War College, Carlisle Barracks, PA.* (1) Positions of professor, instructor, or lecturer associated with courses of instruction of at least 10 months duration for employment not to exceed 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

(i) (Reserved).

(j) *U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.* (1) Positions of Academic Director, Department Head, and Instructor.

(k) *U.S. Army Command and General Staff College, Fort Leavenworth, Kansas.* (1) Positions of professor, associate professor, assistant professor, and instructor associated with courses of instruction of at least 10 months duration, for employment not to exceed up to 5 years, which may be renewed in 1, 2, 3, 4, or 5-year increments indefinitely thereafter.

Section 213.3108 Department of the Navy

(a) *General.* (1)-(14) (Reserved).

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) *Naval Academy, Naval Postgraduate School, and Naval War College.* (1) Professors, instructors, and teachers; the Director of Academic Planning, Naval Postgraduate School; and the Librarian, Organist-Choirmaster, Registrar, the Dean of Admissions, and social counselors at the Naval Academy.

(c) *Chief of Naval Operations.* (1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) *Military Sealift Command.* (1) All positions on vessels operated by the Military Sealift Command.

(e) *Pacific Missile Range Facility, Barking Sands, Hawaii.* (1) All positions. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988.

(f) (Reserved).

(g) *Office of Naval Research.* (1) Scientific and technical positions, GS/GM–13/15, in the Office of Naval Research Asian Office in Tokyo, Japan, which covers East Asia, New Zealand and Australia. Positions are to be filled by personnel having specialized experience in scientific and/or technical disciplines of current interest to the Department of the Navy.

Section 213.3109 Department of the Air Force

(a) *Office of the Secretary.* (1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) *General.* (1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) One hundred forty positions, serviced by Hill Air Force Base, Utah, engaged in interdepartmental activities in support of national defense projects involving scientific and technical evaluations.

(c) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) *U.S. Air Force Academy, Colorado.* (1) (Reserved).

(2) Positions of Professor, Associate Professor, Assistant Professor, and Instructor, in the Dean of Faculty, Commandant of Cadets, Director of Athletics, and Preparatory School of the United States Air Force Academy.

(e) (Reserved).

(f) *Air Force Office of Special Investigations.* (1) Positions of Criminal Investigators/Intelligence Research Specialists, GS–5 through GS–15, in the

Air Force Office of Special Investigations.

(g) Not to exceed eight positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Material Management, Office of Special Activities, Wright-Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) *Air University, Maxwell Air Force Base, Alabama.* (1) Positions of Professor, Instructor, or Lecturer.

(i) *Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio.* (1) Civilian deans and professors.

(j) *Air Force Logistics Command.* (1) One Supervisory Logistics Management Specialist, GM–346–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

(k) One position of Supervisory Logistics Management Specialist, GS–346–15, in the 2762nd Logistics Squadron (Special), at Wright-Patterson Air Force Base, Ohio.

(l) One position of Commander, Air National Guard Readiness Center, Andrews Air Force Base, Maryland.

Section 213.3110 Department of Justice

(a) *General.* (1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) Positions at GS–15 and below on the staff of an office of a special counsel.

(3)–(5) (Reserved).

(6) Positions of Program Manager and Assistant Program Manager supporting the International Criminal Investigative Training Assistance Program in foreign countries. Initial appointments under this authority may not exceed 2 years, but may be extended for an additional period not to exceed 2 years.

(b) *Immigration and Naturalization Service.* (1) (Reserved).

(2) Not to exceed 500 positions of interpreters and language specialists, GS–1040–5/9.

(3) Not to exceed 25 positions, GS–15 and below, with proficiency in speaking, reading, and writing the Russian language and serving in the Soviet Refugee Processing Program with permanent duty location in Moscow, Russia.

(c) *Drug Enforcement Administration.* (1) (Reserved).

(2) Four hundred positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11.

(d) *National Drug Intelligence Center.* All positions.

Section 213.3112 Department of the Interior

(a) *General.* (1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent, in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: *Provided,* that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term ''Indian.''

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum wage rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved).

(c) *Indian Arts and Crafts Board.* (1) The Executive Director.

(d) (Reserved).

(e) *Office of the Assistant Secretary, Territorial and International Affairs.* (1) (Reserved).

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) (Reserved).

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) *National Park Service.* (1) (Reserved).

(2) Positions established for the administration of Kalaupapa National Historic Park, Molokai, Hawaii, when filled by appointment of qualified patients and Native Hawaiians, as provided by Public Law 95–565.

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.

(4) One Special Representative of the Director.

(5) All positions in the Grand Portage National Monument, Minnesota, when filled by the appointment of recognized members of the Minnesota Chippewa Tribe.

(g) *Bureau of Reclamation.* (1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values on conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: *Provided,* that such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) *Office of the Deputy Assistant Secretary for Territorial Affairs.* (1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

Section 213.3113 Department of Agriculture

(a) *General.* (1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the National Agricultural Statistics Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural commodity grader (grain) and (meat), (poultry), and (dairy), agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) (Reserved).

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for subprofessional services; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: *Provided,* that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraph (i) of § 213.3102 or positions within the Forest Service.

(6)–(7) (Reserved).

(b)–(c) (Reserved).

(d) *Farm Service Agency.* (1) (Reserved).

(2) Members of State Committees: *Provided,* that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) *Rural Development.* (1) (Reserved).

(2) County committeemen to consider, recommend, and advise with respect to the Rural Development program.

(3)–(5) (Reserved).

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) *Agricultural Marketing Service.* (1) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists, GS–11 and below; Clerks, Office Automation Clerks, and Computer Clerks at GS–5 and below; Clerk-Typists at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1,280 hours or 180 days in a service year.

(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, and processed fruit and vegetable commodities and the following positions in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS–5 and below; Clerk-Typists at grades GS–4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL–2 and below, respectively, Instrument Mechanics/Workers/Helpers at WG–10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators.

(4) All positions on the staffs of the Milk Market Administrators.

(g)–(k) (Reserved).

(l) *Food Safety and Inspection Service.* (1)–(2) (Reserved).

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and nonveterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) *Grain Inspection, Packers and Stockyards Administration.* (1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

(n) *Alternative Agricultural Research and Commercialization Corporation.* (1) Executive Director.

Section 213.3114 Department of Commerce

(a) *General.* (1)–(2) (Reserved).

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b)–(c) (Reserved).

(d) *Bureau of the Census.* (1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for time-limited employment to conduct a census.

(2) Current Program Interviewers employed in the field service.

(e)–(h) (Reserved).

(i) *Office of the Under Secretary for International Trade.* (1) Fifteen positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) (Reserved).

(3) Not to exceed 15 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit procedures applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) *National Oceanic and Atmospheric Administration.* (1)–(2) (Reserved).

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any 1 calendar year.

(k) (Reserved).

(l) *National Telecommunication and Information Administration.* (1) Seventeen professional positions in grades GS–13 through GS–15.

Section 213.3115 Department of Labor

(a) *Office of the Secretary.* (1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b)–(c) (Reserved).

(d) *Employment and Training Administration.* (1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

Section 213.3116 Department of Health and Human Services

(a) *General.* (1) Intermittent positions, at GS–15 and below and WG–10 and below, on teams under the National Disaster Medical System including Disaster Medical Assistance Teams and specialty teams, to respond to disasters, emergencies, and incidents/events involving medical, mortuary and public health needs.

(b) *Public Health Service.* (1) (Reserved).

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) (Reserved).

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the participating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5)–(6) (Reserved).

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term ''Indian.''

(9) (Reserved).

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11)–(14) (Reserved).

(15) Not to exceed 200 staff positions, GS–15 and below, in the Immigration Health Service, for an emergency staff to provide health related services to foreign entrants.

(c)–(e) (Reserved).

(f) *The President's Council on Physical Fitness.* (1) Four staff assistants.

Section 213.3117 Department of Education

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

Section 213.3124 Board of Governors, Federal Reserve System

(a) All positions.

Section 213.3127 Department of Veterans Affairs

(a) *Construction Division.* (1) Temporary construction workers paid from ''purchase and hire'' funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) *Board of Veterans' Appeals.* (1) Positions, GS–15, when filled by a member of the Board. Except as provided by section 201(d) of Public Law 100–687, appointments under this authority shall be for a term of 9 years, and may be renewed.

(2) Positions, GS–15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

Section 213.3128 Broadcasting Board of Governors

(a) *International Broadcasting Bureau.* (1) Not to exceed 200 positions at grades GS–15 and below in the Office of Cuba Broadcasting. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

Section 213.3132 Small Business Administration

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior

Office approval. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

Section 213.3133 Federal Deposit Insurance Corporation

(a)–(b) (Reserved).

(c) Temporary positions located at closed banks or savings and loan institutions that are concerned with liquidating the assets of the institutions, liquidating loans to the institutions, or paying the depositors of closed insured institutions. New appointments may be made under this authority only during the 60 days immediately following the institution's closing date. Such appointments may not exceed 1 year, but may be extended for not to exceed 1 additional year.

Section 213.3136 U.S. Soldiers' and Airmen's Home

(a) (Reserved).

(b) Positions when filled by member-residents of the Home.

Section 213.3146 Selective Service System

(a) State Directors.

Section 213.3148 National Aeronautics and Space Administration

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

Section 213.3155 Social Security Administration

(a) Six positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(b) Seven positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(c) Two positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointments of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

Section 213.3162 The President's Crime Prevention Council

(a) Up to 7 positions established in the President's Crime Prevention Council office created by the Violent Crime Control and Law Enforcement Act of 1994. No new appointments may be made under this authority after March 31, 1998.

Section 213.3165 Chemical Safety and Hazard Investigation Board

(a) Up to 37 positions established to create the Chemical Safety and Hazard Investigation Board. No new appointments may be made under this authority after December 31, 2000.

(b) Six positions of either Chemical Incident Investigators or Chemical Safety Recommendation Specialists, in the Office of Investigations and Safety Programs. No new appointments may be made under this authority after September 30, 2002.

Section 213.3166 Court Services and Offender Supervision Agency of the District of Columbia

(a) All positions, except for the Director, established to create the Court Services and Offender Supervision Agency of the District of Columbia. No new appointments may be made under this authority after September 30, 2002.

Section 213.3174 Smithsonian Institution

(a) (Reserved).

(b) All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

(c) Positions at GS–15 and below in the National Museum of the American Indian requiring knowledge of, and experience in, tribal customs and culture. Such positions comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative, or program support positions.

Section 213.3175 Woodrow Wilson International Center for Scholars

(a) One Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, one West European Program Administrator, one Environmental Change & Security Studies Program Administrator, one United States Studies Program Administrator, and two Social Science Program Administrators.

Section 213.3178 Community Development Financial Institutions Fund

(a) All positions in the Fund and positions created for the purpose of establishing the Fund's operations in accordance with the Community Development Banking and Financial Institutions Act of 1994, except for any positions required by the Act to be filled by competitive appointment. No new appointments may be made under this authority after September 23, 1998.

Section 213.3180 Utah Reclamation and Conservation Commission

(a) Executive Director.

Section 213.3182 National Foundation on the Arts and the Humanities

(a) *National Endowment for the Arts.* (1) Artistic and related positions at grades GS–13 through GS–15 engaged in the review, evaluation and administration of applications and grants supporting the arts, related research and assessment, policy and program development, arts education, access programs and advocacy or evaluation of critical arts projects and outreach programs. Duties require artistic stature, in-depth knowledge of arts disciplines and/or artistic-related leadership qualities.

Section 213.3190 African Development Foundation

(a) One Enterprise Development Fund Manager. Appointment authority is limited to four years unless extended by the Office.

Section 213.3191 Office of Personnel Management

(a)–(c) (Reserved).

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

Section 213.3194 Department of Transportation

(a) *U.S. Coast Guard.* (1) (Reserved).

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Connecticut.

(b)–(d) (Reserved).

(e) *Maritime Administration.* (1)–(2) (Reserved).

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) (Reserved).

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers, including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

Section 213.3195 Federal Emergency Management Agency

(a) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

Section 213.3199 Temporary Organizations

(a) Positions on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s), does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.

(b) Positions on the staffs of temporary organizations established within continuing agencies when all of the following conditions are met: (1) The temporary organization is established by an authority outside the agency, usually by law or Executive order; (2) the temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years; (3) the work to be performed by the temporary organization is outside the agency's continuing responsibilities; and (4) the positions filled under this authority are those for which other staffing resources or authorities are not available within the agency. An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of the Office.

Schedule B

Section 213.3202 Entire Executive Civil Service

(a) *Student Educational Employment Program—Student Temporary Employment Program.* (1) Students may be appointed to the Student Temporary Employment Program if they are pursuing any of the following educational programs:

(i) High School Diploma or General Equivalency Diploma (GED);

(ii) Vocational/Technical certificate;

(iii) Associate degree;

(iv) Baccalaureate degree;

(v) Graduate degree; or

(vi) Professional degree

* * * * *

(The remaining text of provisions pertaining to the Student Temporary Employment Program can be found in 5 CFR 213.3202(a).)

(b) *Student Educational Employment Program—Student Career* Experience Program. (1)(i) Students may be appointed to the Student Career Experience Program if they are pursuing any of the following educational programs:

(A) High school diploma or General Equivalency Diploma (GED);

(B) Vocational/Technical certificate;

(C) Associate degree;

(D) Baccalaureate degree;

(E) Graduate degree; or

(F) Professional degree.

(ii) Student participants in the Harry S. Truman Foundation Scholarship Program under the provision of Public Law 93–842 are eligible for appointments under the Student Career Experience Program.

[The remaining text of provisions pertaining to the Student Career Experience Program can be found in 5 CFR 213.3202(b).]

* * * * *

(c)–(i) (Reserved).

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.

(k) Positions at grades GS–15 and below when filled by individuals who (1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State

vocational rehabilitation counselor or a Veterans Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the positions to which they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.

(l) (Reserved).

(m) Positions when filled under any of the following conditions: (1) Appointment at grades GS–15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successful executive performance or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

(n) Positions when filled by preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of continuous active service and who, in accordance with 5 U.S.C. 3304(f) (Pub. L. 105–339), applied for these positions under merit promotion procedures when applications were being accepted by the agency from individuals outside its own workforce. These veterans may be promoted, demoted, or reassigned, as appropriate, to other positions within the agency but would remain employed under this excepted authority as long as there is no break in service. No new appointments may be made under this authority after November 30, 1999.

Section 213.3203 Executive Office of the President

(a) (Reserved).

(b) *Office of the Special Representative for Trade Negotiations.* (1) Seventeen positions of economist at grades GS–12 through GS–15.

Section 213.3204 Department of State

(a)-(c) (Reserved).

(d) Fourteen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) (Reserved).

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

Section 213.3205 Department of the Treasury

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b)–(c) (Reserved).

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed (1) a total of 4 years; or (2) 120 days following completion of the service required for conversion under Executive Order 11203, whichever comes first.

(a) Positions, grades GS–5 through 12, of Treasury Enforcement Agent in the Bureau of Alcohol, Tobacco, and Firearms; and Treasury Enforcement Agent, Pilot, Marine Enforcement Officer, and Aviation Enforcement Officer in the U.S. Customs Service. Service under this authority may not exceed 3 years and 120 days.

Section 213.3206 Department of Defense

(a) *Office of the Secretary.* (1) (Reserved).

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) (Reserved).

(5) Four Net Assessment Analysts.

(b) *Interdepartmental activities.* (1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(2) Eight positions, GS–15 or below, in the White House Military Office, providing support for airlift operations, special events, security, and/or administrative services to the Office of the President.

(c) *National Defense University.* (1) Sixty-one positions of Professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) General. (1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(2) Acquisition positions at grades GS–5 through GS–11, whose incumbents have successfully completed the required course of education as participants in the Department of Defense scholarship program authorized under 10 U.S.C. 1744.

(e) *Office of the Inspector General.* (1) Positions of Criminal Investigator, GS–1811–5/15.

(f) *Department of Defense Polygraph Institute, Fort McClellan, Alabama.* (1) One Director, GM–15.

(g) *Defense Security Assistance Agency.* All faculty members with instructor and research duties at the Defense Institute of Security Assistance Management, Wright Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

Section 213.3207 Department of the Army

(a) *U.S. Army Command and General Staff College.* (1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

Section 213.3208 Department of the Navy

(a) *Naval Underwater Systems Center, New London, Connecticut.* One position of Oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) One Director and four Research Psychologists at the professor or GS–15 level in the Defense Personnel Security Research and Education Center.

(d) All civilian professor positions at the Marine Corps Command and Staff College.

(e) One position of Staff Assistant, GS–301–15, whose incumbent will manage the Navy's Executive Dining facilities at the Pentagon.

(f) One position of Housing Management Specialist, GM–1173–14, involved with the Bachelor Quarters Management Study. No new appointments may be made under this authority after February 29, 1992.

Section 213.3209 Department of the Air Force

(a) Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter.

(b)–(c) (Reserved).

(d) Positions of Instructor or professional academic staff at the Air University, associated with courses of instruction of varying durations, for employment not to exceed 3 years, which may be renewed for an indefinite period thereafter.

(e) One position of Director of Development and Alumni Programs, GS–301–13, with the U.S. Air Force Academy, Colorado.

Section 213.3210 Department of Justice

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) (Reserved).

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) (Reserved).

(e) Positions, other than secretarial, GS–6 through GS–15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

Section 213.3213 Department of Agriculture

(a) *Foreign Agricultural Service.* (1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 5 years on a single project for any individual unless delayed completion of a project justifies an extension up to but not exceeding 2 years.

(b) *General.* (1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extensions beyond 4 years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Personnel Officer, Agricultural Research Service, or the Personnel Officer, Forest Service.

(2) Not to exceed 55 Executive Director positions, GM–301–14/15, with the State Rural Development Councils in support of the Presidential Rural Development Initiative.

Section 213.3214 Department of Commerce

(a) *Bureau of the Census.* (1) (Reserved).

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through GS–12.

(3) (Reserved).

(b)–(c) (Reserved).

(d) *National Telecommunications and Information Administration.* (1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

Section 213.3215 Department of Labor

(a) Chairman, two Members, and one Alternate Member, Administrative Review Board.

(b) (Reserved).

(c) *Bureau of International Labor Affairs.* (1) Positions in the Office of Foreign Relations, which are paid by outside funding sources under contracts for specific international labor market technical assistance projects. Appointments under this authority may not be extended beyond the expiration date of the project.

Section 213.3217 Department of Education

(a) Seventy-five positions, not in excess of GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in midcareer development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

Section 213.3227 Department of Veterans Affairs

(a) Not to exceed 800 principal investigatory, scientific, professional, and technical positions at grades GS–11 and above in the medical research program.

(b) Not to exceed 25 Criminal Investigator (Undercover) positions, GS–1811, in grades 5 through 12, conducting undercover investigations in the Veterans Health Administration supervised by the VA, Office of Inspector General. Initial appointments shall be greater than 1 year, but not to exceed 4 years and may be extended indefinitely in 1-year increments.

Section 213.3236 U.S. Soldiers' and Airmen's Home

(a) (Reserved).

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

Section 213.3240 National Archives and Records Administration

(a) Executive Director, National Historical Publications and Records Commission.

Section 213.3248 National Aeronautics and Space Administration

(a) Not to exceed 40 positions of Command Pilot, Pilot, and Mission Specialist candidates at grades GS–7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

Section 213.3255 Social Security Administration

(a) Temporary and time-limited positions in the Ticket to Work and Work Incentives Advisory Panel. No employees may be appointed after November 17, 2007.

Section 213.3274 Smithsonian Institution

(a) (Reserved).

(b) *Freer Gallery of Art.* (1) Not to exceed four positions of Oriental Art Restoration Specialist at grades GS–9 through GS–15.

Section 213.3276 Appalachian Regional Commission

(a) Two Program Coordinators.

Section 213.3278 Armed Forces Retirement Home

(a) *Naval Home, Gulfport, Mississippi.* (1) One Resource Management Officer position and one Public Works Officer position, GS/GM–15 and below.

Section 213.3282 National Foundation on the Arts and the Humanities

(a) (Reserved).

(b) *National Endowment for the Humanities.* (1) Professional positions at grades GS–11 through GS–15 engaged in the review, evaluation, and administration of grants supporting scholarship, education, and public programs in the humanities, the duties of which require indepth knowledge of a discipline of the humanities.

Section 213.3291 Office of Personnel Management

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1–, 2–, or 3-year increments indefinitely thereafter.

Schedule C

Section 213.3303 Executive Office of the President

Council of Economic Advisers

CEA 1 Confidential Assistant to the Chairman
CEA 4 Confidential Assistant to the Chairman
CEA 5 Administrative Operations Assistant to a Member

Council on Environmental Quality

CEQ 1 Associate Director for Energy and Transportation to the Chairman
CEQ 10 Associate Director for Communications to the Chair, Council on Economic Quality
CEQ 12 Environmental Research Assistant to the Chief of Staff
CEQ 17 Special Assistant to the Chair, Council on Economic Quality

Office of Management and Budget

OMB 4 Associate Administrator to the Administrator, Office of Procurement Policy
OMB 9 Special Assistant to the Administrator, Office of Information and Regulatory Affairs
OMB 10 Legislative Analyst to the Associate Director for Legislative Affairs
OMB 11 Staff Assistant to the Director, Office of Management and Budget
OMB 12 Confidential Assistant to the Counselor to the Director, Office of Federal Financial Management OMB
OMB 15 Public Affairs Officer to the Associate Director for Communications
OMB 20 Special Assistant to the Associate Director for Information Technology and E–Government
OMB 21 Counselor to the Controller, Office of Federal Financial Management
OMB 23 Deputy Director to the Associate Director for Communications
OMB 25 Special Assistant to the Associate Director for Information Technology and E–Government
OMB 26 Confidential Assistant to the Assistant Director for Administration
OMB 27 Confidential Assistant to the Deputy Director, Office of Management and Budget
OMB 28 Legislative Assistant to the Associate Director for Legislative Affairs
OMB 30 Confidential Assistant to the Associate Director for Information Technology and E–Government
OMB 31 Confidential Assistant to the Associate Director for Legislative Affairs
OMB 32 Public Affairs Specialist to the Associate Director for Communications
OMB 33 Deputy General Counsel to the General Counsel
OMB 136 Public Affairs Specialist to the Associate Director for Communication
OMB 138 Deputy General Council to the General Counsel
OMB 141 Deputy to the Associate Director to the Associate Director for Legislative Affairs (Senate)
OMB 146 Special Assistant to the Director, Office of Management and Budget
OMB 148 Confidential Assistant to the Associate Director, National Security Programs

Office of National Drug Control Policy

ONDCP 1 Deputy Chief of Staff to the Chief of Staff
ONDCP 2 Legislative Analyst to the Director, Office of Legislative Affairs
ONDCP 3 Public Affairs Specialist to the Director, Office of National Drug Control Policy
ONDCP 4 Confidential Counsel to the Director, Office of National Drug Control Policy
ONDCP 5 Press Secretary (Assistant Director) to the Director, Office of National Drug Control Policy
ONDCP 6 Special Assistant to the Director, Office of National Drug Control Policy
ONDCP 7 Special Assistant to the Director, Office of National Drug Control Policy
ONDCP 8 Associate Deputy Director to the Deputy Director, State and Local Affairs
ONDCP 12 Information Receptionist to the Director, Office of the National Drug Control Policy
ONDCP 83 Chief, Press Relations to the Director, Office of National Drug Control Policy

Office of Science and Technology Policy

OSTP 5 Executive Assistant for Policy and Intergovernmental Affairs to the General Counsel
OSTP 17 Executive Director, President's Council of Advisors on Science and Technology to the Director
OSTP 21 Confidential Assistant to the Associate Director, Technology Division
OSTP 22 Confidential Assistant (Director's Office) to the Chief of Staff
OSTP 28 Assistant for Communications to the Director

Office of the United States Trade Representative

USTR 13 Confidential Assistant to the General Counsel
USTR 18 Confidential Assistant to the Chief of Staff

USTR 19 Special Textile Negotiator to the U.S. Trade Representative
USTR 23 Confidential Assistant to the Deputy U.S. Trade Representative
USTR 35 Deputy Assistant U.S. Trade Representative for Congressional Affairs to the Assistant U.S. Trade Representative
USTR 46 Public Affairs Specialist to the Associate U.S. Trade Representative for Policy and Communications
USTR 70 Deputy Assistant U.S. Trade Representative for Congressional Affairs to the Assistant U.S. Trade Representative
USTR 72 Confidential Assistant to the U.S. Trade Representative
USTR 74 Special Assistant to the U.S. Trade Representative
USTR 75 Director of Scheduling to the U.S. Trade Representative

Official Residence of the Vice President

ORVP 1 Residence Manager and Social Secretary to the Assistant to the Vice President and Chief of Staff to Mrs. Cheney

Section 213.3304 Department of State

ST 9 Special Assistant to the Secretary of State
ST 38 Public Affairs Specialist to the Assistant Secretary for Public Affairs
ST 43 Foreign Affairs Research Analyst to the Assistant Secretary for Intelligence and Research
ST 84 Staff Assistant to the Assistant Secretary for Equal Employment and Civil Rights
ST 87 Staff Assistant to the Assistant Secretary, Equal Employment and Civil Rights
ST 98 Program Officer (Director of Press Center) to the Assistant Secretary for Public Affairs
ST 99 Legislative Analyst to the Assistant Secretary for Legislative Affairs
ST 103 Public Affairs Specialist to the Deputy Assistant Secretary
ST 104 Special Assistant to the Under Secretary
ST 105 Special Assistant to the Under Secretary for Arms Control and International Security Affairs
ST 106 Special Assistant to the Under Secretary
ST 107 Member to the Director, Policy Planning Staff
ST 108 Member to the Director, Policy Planning Staff
ST 109 Special Assistant to the Deputy Secretary of State
ST 110 Special Assistant to the Assistant Secretary for Public Affairs
ST 111 Public Affairs Specialist to the Assistant Secretary for Public Affairs
ST 112 Staff Assistant to the Director, Policy Planning Staff, Office of the Secretary
ST 113 Special Assistant to the Under Secretary for Economic, Business and Agricultural Affairs
ST 115 Staff Director, Fulbright Foreign Scholarship Fund to the Assistant Secretary, Education and Cultural Affairs
ST 116 Legislative Management Officer to the Assistant Secretary, Bureau of Legislative Affairs
ST 118 Special Assistant to the Deputy Secretary of State
ST 119 Special Advisor to the Assistant Secretary, Bureau of East Asian and Pacific Affairs
ST 121 Special Assistant to the Assistant Secretary for Public Affairs
ST 122 Public Affairs Specialist to the Assistant Secretary for Public Affairs
ST 123 Special Assistant to the Coordinator, International Information Program
ST 124 Special Assistant to the Chief of Protocol
ST 126 Staff Assistant to the Deputy Secretary of State
ST 128 Protocol Officer to the Chief of Protocol
ST 129 Staff Assistant to the Deputy Assistant Secretary
ST 130 Staff Assistant to the Under Secretary for Management
ST 131 Special Assistant to the Assistant Secretary, Legal Advisor
ST 132 Legislative Management Officer to the Assistant Secretary for Legislative Affairs
ST 133 Public Affairs Specialist to the Assistant Secretary for Public Affairs
ST 159 Staff Assistant to the Deputy Assistant Secretary, Bureau of Oceans
ST 160 Staff Assistant to the Assistant Secretary Bureau of Democracy, Human Rights and Labor
ST 161 Staff Assistant to the Director, White House Liaison Staff
ST 162 Staff Assistant to the Assistant Secretary for International Narcotics and Law Enforcement Affairs
ST 163 Public Affairs Specialist to the Assistant Secretary for Public Affairs
ST 164 Executive Assistant to the Deputy Secretary of State
ST 165 Member to the Director, Policy Planning Staff
ST 166 Attorney Advisor to the Assistant Secretary for Civil Rights
ST 167 Special Assistant to the Assistant Secretary for Legislative Affairs
ST 169 Legislative Analyst to the Assistant Secretary for Legislative Affairs
ST 171 Special Assistant to the Assistant Secretary for Political-Military Affairs
ST 172 Legislative Management Officer to the Assistant Secretary for Legislative Affairs
ST 176 Executive Assistance to the Inspector General
ST 177 Special Assistant to the Under Secretary for Arms Control and International Security
ST 182 Special Assistant to the Assistant Secretary for African Affairs
ST 184 Special Assistant to the Deputy Secretary of State
ST 185 Special Assistant to the Assistant Secretary for European Affairs
ST 188 Foreign Affairs Officer to the Coordinator for Counter-Terrorism
ST 190 Legislative Management Officer to the Assistant Secretary for Legislative Affairs
ST 191 Senior Policy Advisor to the Assistant Secretary for Legislative Affairs
ST 192 Staff Assistant to the Under Secretary for Arms Control and International Security
ST 193 Supervisory Management Analyst to the Deputy Assistant Secretary for Buildings Operations
ST 194 Senior Advisor to the Under Secretary for Arms Control and International Security
ST 195 Special Assistant to the Assistant Secretary for Educational and Cultural Affairs
ST 199 Attorney-Advisor to the Legal Advisor
ST 201 Staff Assistant to the Under Secretary for Global Affairs
ST 216 Senior Advisor to the U.S. Permanent Representative to the Organization of American States
ST 221 Legislative Management Officer to the Assistant Secretary for Legislative Affairs
ST 224 Senior Advisor to the Assistant Secretary for South Asian Affairs
ST 228 Special Assistant to the Assistant Secretary, Bureau of East Asian and Pacific Affairs
ST 237 Legislative Analyst to the Senior Legislative Analyst
ST 238 Staff Assistant to the Under Secretary for Arms Control and International Security
ST 245 Foreign Affairs Officer to the Director, Office to Monitor and Combat Trafficking in Persons
ST 267 Foreign Affairs Officer to the Assistant Secretary for Public Affairs
ST 275 Staff Assistant to the Director, White House Liaison
ST 292 Special Assistant to the Assistant Secretary for Resource Management
ST 306 Staff Assistant to the Senior Advisor (White House Liaison)
ST 315 Office Director (Foreign Affairs) to the Assistant Secretary, Democracy, Human Rights and Labor

ST 322 Public Affairs Specialist to the Deputy Assistant Secretary (Principal) in Public Affairs
ST 327 Staff Assistant to the Assistant Secretary, Bureau of Educational and Cultural Affairs
ST 345 Public Affairs Specialist to the Assistant Secretary for Public Affairs
ST 346 Protocol Officer (Ceremonials) to the Chief of Protocol
ST 350 Protocol Officer (Visits) to the Chief of Protocol
ST 370 Program Officer to the Deputy Assistant Secretary, Bureau of Public Affairs
ST 393 Special Assistant to the Deputy Assistant Secretary, Chief Operating Officer of Overseas Buildings Operations
ST 394 Legislative Management Officer to the Assistant Secretary for Legislative Affairs
ST 395 Director, Art in Embassies Program to the Deputy Assistant Secretary, Chief Operating Officer of Overseas Buildings Operations
ST 396 Program Officer to the Director, Office of International Visitors, Bureau of Educational and Cultural Affairs
ST 397 Foreign Affairs Officer to the Under Secretary for Global Affairs
ST 399 Confidential Assistant to the Secretary of State
ST 419 Staff Assistant to the Assistant Secretary for Resource Management
ST 435 Public Affairs Specialist to the Assistant Secretary, Bureau of Educational and Cultural Affairs
ST 447 Foreign Affairs Officer to the Assistant Secretary for Western Hemisphere Affairs
ST 450 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs
ST 479 Senior Technical Advisor to the Coordinator, Office of International and Information Programs
ST 499 Senior Advisor to the Assistant Secretary, International Narcotics and Law Enforcement Affairs
ST 500 Foreign Affairs Officer to the Coordinator for United States Assistance to Europe and Eurasia
ST 503 Special Assistant to the Deputy Assistant Secretary, China
ST 505 Resource, Plans, and Policy Advisor to the Assistant Secretary for Resource Management
ST 510 Special Assistant to the Assistant Secretary for Resource Management
ST 516 Foreign Affairs Officer to the Deputy Director, Policy Planning Staff
ST 519 Public Affairs Specialist to the Deputy Assistant Secretary, Bureau of Public Affairs
ST 522 Special Assistant to the Assistant Secretary for African Affairs Bureau
ST 528 Special Assistant to the Chief of Protocol
ST 532 Staff Assistant to the Chief of Protocol
ST 547 Supervisory Foreign Affairs Officer to the Deputy Office Director, Office to Monitor and Combat Trafficking in Persons
ST 548 Resources, Plans and Policy Advisor to the Assistant Secretary for Resource Management
ST 584 Supervisory Management Analyst to the Deputy Assistant Secretary for Logistics Management

International Boundary and Water Commission, United States and Mexico

IBWC 1 Confidential Assistant to the Commissioner, International Boundary and Water Commission, United States and Mexico

Section 213.3305 Department of the Treasury

TREA 59 Special Assistant to the Assistant Secretary Tax Policy)
TREA 139 Director of Strategic Planning, Scheduling and Advance to the Chief of Staff
TREA 230 Public Affairs Specialist to the Director, Public Affairs
TREA 250 Director, Public Affairs to the Deputy Assistant Secretary (Public Affairs)
TREA 277 Speechwriter to the Assistant Secretary for Public Affairs
TREA 307 Special Assistant to the Treasurer of the United States
TREA 317 Public Affairs Specialist to the Director, Public Affairs
TREA 318 Deputy to the Assistant Secretary, Legislative Affairs (International)
TREA 351 Public Affairs Specialist to the Director, Office of Public Affairs
TREA 362 Special Assistant to the Assistant Secretary for Financial Institutions
TREA 364 Deputy Assistant Secretary to the Assistant Secretary for Financial Institutions
TREA 379 Staff Assistant to the White House Liaison
TREA 380 Deputy to the Assistant Secretary, Legislative Affairs
TREA 381 Special Assistant to the Assistant Secretary for Legislative Affairs
TREA 390 Senior Advisor to the Assistant Secretary for Management and Chief Financial Officer
TREA 391 Deputy Director for Scheduling and Advance to the Director of Scheduling
TREA 395 Deputy Executive Secretary to the Executive Secretary
TREA 396 Senior Advisor to the Deputy Assistant Secretary for Public Liaison
TREA 401 Special Assistant for Advance to the Director of Scheduling
TREA 404 Senior Advisor to the Assistant Secretary for Financial Institutions
TREA 405 Special Assistant to the Assistant Secretary, Legislative Affairs
TREA 407 Senior Advisor to the Assistant Secretary (Financial Markets)
TREA 410 Senior Advisor to the Deputy Secretary
TREA 411 Special Assistant to the Assistant Secretary for Public Affairs
TREA 412 Special Assistant for Advance to the Director of Scheduling
TREA 414 Advisor to the Deputy Secretary of Treasury
TREA 417 Senior Advisor to the Deputy Assistant Secretary for Government Financial Policy
TREA 421 Special Assistant to the Assistant Secretary, (Legislative Affairs)
TREA 428 Deputy Assistant Secretary (Public Liaison) to the Assistant Secretary (Public Affairs)

Section 213.3306 Department of Defense

DOD 1 Staff Specialist to the Under Secretary of Defense, Acquisition, Technology and Logistics
DOD 3 Special Assistant to the Deputy Under Secretary of Defense (International Technology Security)
DOD 4 Special Assistant to the Director, Defense Research and Engineering
DOD 5 Staff Specialist to the Deputy Under Secretary of Defense (Logistics and Material Readiness)
DOD 6 Staff Specialist to the Deputy Under Secretary of Defense (Logistics and Material Readiness)
DOD 7 Personal and Confidential Assistant to the Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs
DOD 8 Staff Specialist to the Director, Small and Disadvantaged Business Utilization
DOD 32 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs)
DOD 33 Personal Secretary to the Deputy Secretary of Defense
DOD 270 Confidential Assistant to the Executive Secretary, Senior Executive Council
DOD 271 Private Secretary to the Assistant Secretary of Defense (Reserve Affairs)
DOD 272 Special Assistant to the Principal Deputy Under Secretary of Defense, Office of the Comptroller

DOD 273 Civilian Executive Assistant to the Special Assistant to the Secretary of Defense (White House Liaison)
DOD 274 Staff Assistant to the Special Assistant to the Secretary of Defense (White House Liaison)
DOD 275 Confidential Assistant to the Assistant Secretary of Defense (Force Management Policy)
DOD 278 Special Assistant to the Inspector General, Department of Defense
DOD 279 Personal and Confidential Assistant to the Director Operational Test and Evaluation
DOD 280 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legislative Affairs)
DOD 283 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legislative Affairs)
DOD 298 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DOD 300 Confidential Assistant to the Under Secretary (Acquisition and Technology)
DOD 302 Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison)
DOD 304 Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison)
DOD 305 Personal and Confidential Assistant to the Under Secretary of Defense (Personnel and Readiness)
DOD 307 Confidential Assistant to the Secretary of Defense
DOD 310 Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison)
DOD 312 Director, Cooperative Threat Reduction to the Assistant Secretary of Defense (Strategy and Threat Reduction)
DOD 314 Coordinator of Reserve Integration to the Principal Deputy Assistant Secretary of Defense (Reserve Affairs)
DOD 316 Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison)
DOD 317 Director of Protocol to the Special Assistant to the Secretary and Deputy Secretary of Defense
DOD 318 Defense Fellow to the Special Assistant to the Secretary (White House Liaison)
DOD 319 Confidential Assistant to the Secretary of Defense
DOD 320 Personal and Confidential Assistant to the Secretary of Defense
DOD 321 Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison)
DOD 332 Personal and Confidential Assistant to the Assistant Secretary of Defense (Regional Security)
DOD 333 Speechwriter to the Director, Directorate for Editorial Services
DOD 368 Personal and Confidential Assistant to the Assistant Secretary of Defense for Legislative Affairs
DOD 454 Special Assistant to the Director of Net Assessment
DOD 456 Director, Management Initiatives to the Under Secretary of Defense (Personnel and Readiness)
DOD 457 Special Assistant (Joint Chiefs of Staff) to the Special Assistant to the Secretary of Defense (White House Liaison)
DOD 460 Public Affairs Specialist to the Assistant Secretary of Defense (Public Affairs)
DOD 469 Special Assistant (Communications) to the Principal Deputy Assistant Secretary of Defense (Legislative Affairs)
DOD 470 Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison)
DOD 471 Public Affairs Specialist to Deputy Assistant Secretary for Public Affairs
DOD 473 Personal and Confidential Assistant to the Assistant Secretary of Defense for International Security Affairs
DOD 474 Special Assistant to the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict
DOD 480 Executive Assistant to the Assistant Secretary of Defense (Strategy Requirements and Resources)
DOD 509 Protocol Officer to the Special Assistant to the Secretary of Defense (White House Liaison)
DOD 518 Public Affairs Specialist to the Assistant Secretary of Defense (Public Affairs)
DOD 519 Private Secretary to the Assistant Secretary of Defense (Regional Security Affairs)
DOD 520 Special Assistant to the Deputy Assistant Secretary of Defense for Prisoner of War/Missing Personnel Affairs
DOD 521 Staff Assistant to the Deputy Assistant Secretary of Defense (Near East/South Asia)
DOD 530 Writer-Editor to the Director, Strategic Communications
DOD 579 Special Assistant to the Assistant Secretary of Defense (International Security Policy)
DOD 580 Staff Assistant to the Assistant Secretary of Defense (International Security Policy)
DOD 583 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legislative Affairs)
DOD 584 Writer-Editor to the Assistant Secretary of Defense (Public Affairs)
DOD 585 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs)
DOD 589 Special Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DOD 590 Defense Fellow to the Director, Administration and Management
DOD 611 Personal and Confidential Assistant to the Secretary of Defense
DOD 615 Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison)
DOD 618 Confidential Assistant to the Assistant Secretary of Defense (Health Affairs)
DOD 620 Speech Writer to the Director, Directorate for Editorial Services
DOD 621 Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison)
DOD 622 Confidential Assistant to the Assistant Secretary of Defense
DOD 623 Public Affairs Specialist to the Assistant Secretary of Defense for Public Affairs
DOD 624 Public Affairs Specialist to the Assistant Secretary of Defense for Public Affairs
DOD 625 Executive Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DOD 643 Personal and Confidential Assistant to the Under Secretary of Defense (Acquisition, Technology and Logistics)
DOD 644 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DOD 650 Electronic Commerce Specialist to the Deputy Assistant Secretary of Defense (Deputy Chief Information Officer)
DOD 651 Personal and Confidential Assistant to the Under Secretary of Defense (Comptroller)
DOD 663 Public Affairs Specialist to the Deputy Assistant Secretary for Communications
DOD 665 Special Assistant to the Under Secretary of Defense for Policy
DOD 666 Special Assistant to the Principal Deputy Under Secretary of Defense (Policy)
DOD 669 Public Affairs Specialist to the Deputy Assistant Secretary of Defense for Public Affairs
DOD 670 Staff Assistant to the Assistant Secretary of Defense (International Security Policy)
DOD 671 Staff Assistant to the Assistant Secretary of Defense (International Security Policy)
DOD 672 Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison)

DOD 673 Staff Assistant to the Assistant Secretary of Defense (International Security Policy)
DOD 674 Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison)
DOD 675 Staff Assistant to the Deputy Assistant Secretary of Defense for East Asia and Pacific
DOD 677 Research Assistant to the Deputy Assistant Secretary of Defense for Issues and Strategy Management
DOD 680 Confidential Assistant to the Deputy Secretary of Defense
DOD 686 Personal and Confidential Assistant to the General Counsel
DOD 690 Personal and Confidential Assistant to the Secretary of Defense
DOD 691 Special Policy Advisor to the Under Secretary of Defense (Policy)
DOD 692 Special Advisor to the Under Secretary of Defense (Policy)
DOD 694 Staff Assistant to the Deputy Assistant Secretary of Defense (Near East/South Asia)
DOD 695 Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison)

Section 213.3307 Department of the Army (DoD)

ARMY 1 Executive Staff Assistant to the Secretary of the Army
ARMY 2 Special Assistant to the Secretary of the Army
ARMY 3 Special Assistant to the General Counsel
ARMY 4 Confidential Assistant to the General Counsel
ARMY 5 Secretary (Office Automation) to the Under Secretary of the Army
ARMY 25 Personal And Confidential Assistant to the Assistant Secretary of the Army (Financial Management and Comptroller)
ARMY 26 Special Assistant to the General Counsel of the Army
ARMY 73 Special Assistant to the Assistant Secretary of the Army (Civil Works) for Congressional Affairs

Section 213.3308 Department of the Navy (DoD)

NAV 56 Staff Assistant to the Assistant Secretary of the Navy (Financial Management)
NAV 66 Staff Assistant to the Secretary of the Navy
NAV 69 Staff Assistant to the Under Secretary of the Navy
NAV 71 Special Assistant to the Secretary of the Navy

Section 213.3309 Department of the Air Force (DoD)

AF 7 Confidential Assistant to the Assistant Secretary (Financial Management Comptroller)
AF 8 Confidential Assistant to the General Counsel
AF 42 Special Assistant for Community Relations to the Special Assistant for Policy and Planning
AF 44 Confidential Assistant to the Secretary of the Air Force

Section 213.3310 Department of Justice

JUS 13 Special Assistant to the Deputy Attorney General
JUS 14 Deputy Administrator to the Administrator, Office of Juvenile Justice and Delinquency Prevention
JUS 15 Deputy Director to the Director, National Institute of Justice
JUS 16 Staff Assistant to the Assistant Attorney General, Office of Justice Programs, Bureau of Justice Statistics
JUS 17 Special Assistant to the Director, Office of Domestic Preparedness, Office of Justice Programs
JUS 18 Special Assistant to the Director, Office of Congressional and Public Relations
JUS 19 Special Assistant to the Chairman, Foreign Claims Settlement Commission
JUS 20 Director, Office of Police Corps and Law Enforcement Education to the Assistant Attorney General, Office of Justice Programs
JUS 21 Chief of Staff to the Director, Bureau of Justice Assistance, Office of Justice Programs
JUS 22 Research Assistant to the Director, Office of Public Affairs
JUS 23 Special Assistant for International Protocol to the Director, Office of International Affairs, Criminal Division
JUS 24 Special Assistant to the Deputy Administrator, Drug Enforcement Administration
JUS 25 Special Assistant to the Assistant Attorney General, Criminal Division
JUS 27 Counsel to the Assistant Attorney General, Environmental and Natural Resources Division
JUS 38 Secretary (OA) to the United States Attorney, District of Massachusetts
JUS 40 Secretary (OA) to the United States Attorney, Eastern District of Michigan
JUS 70 Attorney Advisor to the Assistant Attorney General, Civil Division
JUS 97 Assistant to the Attorney General
JUS 100 Public Affairs Specialist to the Director, Office of Public Affairs
JUS 104 Attorney Advisor to the Assistant Attorney General, Civil Division
JUS 114 Assistant to the Attorney General
JUS 115 Special Assistant to the Director, Community Oriented Policing Services
JUS 122 Senior Advisor to the Director, Office of Public Affairs
JUS 129 Special Counsel to the Assistant Attorney General, Antitrust Division
JUS 141 Counsel to the Assistant Attorney General, Criminal Division
JUS 144 Special Assistant to the Solicitor General
JUS 149 Attorney Advisor to the Assistant Attorney General, Environment and Natural Resources Division
JUS 165 Counsel to the Associate Attorney General
JUS 166 Counsel to the Attorney General
JUS 173 Secretary (OA) to the Assistant United States Attorney, Northern District of Oklahoma
JUS 174 Secretary (Office Automation) to the United States Attorney General's Office, District of Wyoming
JUS 187 Counsel to the Assistant Attorney General, Civil Division
JUS 188 Attorney Advisor to the Assistant Attorney General, Civil Rights Division
JUS 189 Attorney Advisor to the Assistant Attorney General, Civil Division
JUS 198 Special Assistant to the Assistant Attorney General, Criminal Division
JUS 199 Counsel to the Director, Office of International Affairs
JUS 205 Executive Assistant to the Commissioner, Immigration and Naturalization Service
JUS 215 Attorney Advisor/Special Assistant to the Director, Office of Domestic Preparedness, Office of Justice Programs
JUS 217 Attorney Advisor to the Assistant Attorney General, Office of Justice Programs
JUS 233 Counsel to the Assistant Attorney General, Civil Division
JUS 242 Attorney Advisor to the Assistant Attorney General, Civil Division
JUS 245 Attorney Advisor to the Assistant Attorney General, Environment and Natural Resources Division
JUS 248 Special Assistant to the Assistant Attorney General, Office of Justice Programs
JUS 249 Special Assistant to the Director, Violence Against Women Office, Office of Justice Programs
JUS 255 Counsel to the Assistant Attorney General, Civil Rights Division
JUS 256 Senior Counsel for Voting Reform to the Assistant Attorney General, Civil Rights Division

JUS 264 Confidential Assistant to the Assistant Attorney General, Antitrust Division
JUS 267 Counsel to the Assistant Attorney General, Civil Rights Division
JUS 268 Counsel to the Assistant Attorney General, Antitrust Division
JUS 270 Special Assistant to the Assistant Attorney General, Civil Rights Division
JUS 272 Associate Director and Counsel, Faith Based Task Force to the Principal Deputy Assistant Attorney General, Office of Justice Programs
JUS 277 Assistant for Scheduling to the Attorney General
JUS 278 Deputy Director to the Director, Office of Intergovernmental Affairs
JUS 279 Deputy Director to the Director, Office of Intergovernmental Affairs
JUS 280 Special Assistant to the Assistant Attorney General, Office of Legal Development
JUS 283 Confidential Assistant to the Director, Office of Intergovernmental Affairs
JUS 287 Special Assistant to the Assistant Attorney General, Criminal Division
JUS 293 Special Assistant to the Deputy Attorney General
JUS 319 Attorney Advisor to the Assistant Attorney General, Criminal Division
JUS 322 Counsel to the Assistant Attorney General, Office of Legal Policy
JUS 343 Assistant and Deputy White Liaison to the Attorney General
JUS 346 Deputy Director to the Director, Office of Public Affairs
JUS 360 Senior Policy Advisor to the Assistant Attorney General, Office of Legal Policy
JUS 367 Confidential Assistant to the Attorney General
JUS 387 Deputy Director to the Director, Office of Public Affairs
JUS 388 Staff Assistant to the Director, United States Marshals Service
JUS 406 Public Affairs Specialist to the Director, Office of Public Affairs
JUS 409 Staff Assistant to the Assistant Attorney General, Office of Justice Programs
JUS 418 Secretary (OA) to the U.S. Attorney, District of Nebraska
JUS 420 Secretary (Office Automation) to the United States Attorney, Eastern District of Pennsylvania
JUS 423 Secretary (Office Automation) to the United States Attorney, District of New Mexico
JUS 426 Secretary (OA) to the United States Attorney, District of Maryland
JUS 427 Secretary (OA) to the United States Attorney, District of New Hampshire
JUS 429 Secretary (OA) to the United States Attorney, Eastern District of Arkansas
JUS 430 Secretary (OA) to the United States Attorney, District of Wichita, Kansas
JUS 432 Senior Counsel to the Director and Project Safe Neighborhoods Coordinator
JUS 436 Secretary (OA) to the United States Attorney, Southern District of Alabama
JUS 437 Secretary (OA) to the United States Attorney, District of Delaware
JUS 438 Deputy Assistant Attorney General to the Assistant Attorney General, Tax Division
JUS 444 Special Assistant/Associate Director to the Director, Office of Intergovernmental Affairs
JUS 447 Staff Assistant to the Principal Deputy Assistant Attorney General, Office of Justice Programs
JUS 448 Secretary (OA) to the Assistant United States Attorney, Western District of Oklahoma

Section 213.3312 Department of the Interior

INT 18 Special Assistant to the Deputy Director for External Affairs (National Park Service)
INT 19 Deputy Director to the Director, External and Intergovernmental Affairs
INT 20 Assistant Director, Legislative and Congressional Affairs to the Director, National Park Service
INT 25 Special Assistant to the Secretary of Interior
INT 37 Hispanic Media Outreach Coordinator to the Director, Office of Communications
INT 68 Associate Director to the Director, Office of Congressional and Legislative Affairs
INT 73 Speechwriter to the Director of Communications
INT 75 Chief, Congressional and Legislative Affairs to the Director of External and Intergovernmental Affairs
INT 86 Special Assistant to the Director, Minerals Management Service
INT 91 Public Affairs Specialist to the Director, External and Internal Governmental Affairs
INT 92 Special Assistant to the Director, External and Intergovernmental Affairs
INT 95 Special Assistant for Communications to the Assistant Secretary, Indian Affairs
INT 103 Special Assistant to the Assistant Secretary, Indian Affairs
INT 124 Special Assistant to the Director, Fish and Wildlife Service
INT 129 Special Assistant to the Assistant Secretary, Fish, Wildlife and Parks
INT 133 Special Assistant to the Director, Fish and Wildlife Service
INT 140 Special Assistant to the Deputy Director for External Affairs
INT 375 Counselor to the Assistant Secretary for Fish, Wildlife and Parks
INT 467 Special Assistant to the Director, Office of External Affairs
INT 479 Special Assistant to the Director of Minerals Management Service
INT 490 Special Assistant (Advance) to the Deputy Chief of Staff
INT 518 Special Assistant to the Director, Bureau of Land Management
INT 524 Special Assistant to the Director, Bureau of Land Management
INT 529 Special Assistant to the Director, National Park Service
INT 530 Special Assistant to the Deputy Secretary
INT 531 Special Assistant to the Solicitor
INT 535 Special Assistant to the Assistant Secretary, Water and Science
INT 542 Special Assistant to the Assistant Secretary, Policy Management and Budget
INT 547 Press Secretary to the Director of Communications
INT 551 Special Assistant for Scheduling and Advance to the Deputy Chief of Staff
INT 557 Director of Scheduling and Advance to the Deputy Chief of Staff
INT 559 Special Assistant for Scheduling and Advance to the Deputy Chief of Staff
INT 560 Associate Director for Senate to the Director, Congressional and Legislative Affairs
INT 561 Special Assistant to the Secretary for Alaska to the Chief of Staff
INT 567 White House Liaison to the Chief of Staff

Section 213.3313 Department of Agriculture

AGR 103 Special Assistant to the Under Secretary for Farm and Foreign Agricultural Service
AGR 105 Confidential Assistant to the Chief of Staff
AGR 110 Confidential Assistant to the Secretary
AGR 111 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 112 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 114 Confidential Assistant to the Deputy Secretary

AGR 116 Confidential Assistant to the Under Secretary for Rural Development
AGR 119 Director, Legislative and Intergovernmental Affairs to the Under Secretary for Research, Education And Economics
AGR 121 Confidential Assistant to the Chief Financial Officer
AGR 123 Special Assistant to the Under Secretary for Natural Resources and Environment
AGR 125 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 126 Staff Assistant to the Under Secretary for Marketing and Regulatory Programs
AGR 127 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 128 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 129 Special Assistant to the Administrator, Risk Management Agency
AGR 130 Confidential Assistant to the Director, Planning and Coordination
AGR 131 Director of Advance to the Deputy Chief of Staff, Communications
AGR 132 Special Assistant to the Under Secretary for Food Safety
AGR 133 Special Assistant to the Director of Human Resources Management
AGR 136 Special Assistant to the Deputy Administrator, Office of Community Development
AGR 137 Special Assistant to the Administrator, Rural Utilities Service
AGR 138 Special Assistant to the Administrator, Rural Utilities Service
AGR 140 Confidential Assistant to the Director, Office of Small and Disadvantaged Business Utilization
AGR 159 Special Assistant to the Administrator, Foreign Agricultural Service
AGR 161 Special Assistant to the Director, Office of Communications
AGR 205 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 231 Director, Legislative and Public Affairs Staff to the Deputy Under Secretary, Rural Development
AGR 263 Special Assistant to the Chief, Natural Resource Manager
AGR 275 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 332 Confidential Assistant to the Administrator, Rural Business-Cooperative Service
AGR 355 Director of Speech Writing to the Director of Communications
AGR 377 Confidential Assistant to the Administrator, Rural Business and Cooperative Service
AGR 384 Confidential Assistant to the Secretary of Agriculture
AGR 386 Special Assistant to the Administrator, Rural Business-Cooperative Service
AGR 415 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 422 Confidential Assistant to the Administrator of the Farm Service Agency and Commodity Credit Corporation
AGR 436 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 499 Confidential Assistant to the Secretary of Agriculture
AGR 534 Confidential Assistant to the Director, Office of Communications
AGR 556 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service
AGR 565 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service
AGR 566 Confidential Assistant to the Director, Legislative Affairs and Public Affairs Staff
AGR 588 Staff Assistant to the Confidential Assistant, Office of the Secretary
AGR 592 Special Assistant to the Administrator, Farm Service Agency

Section 213.3314 Department of Commerce

COM 4 Deputy Director to the Director, Executive Secretariat
COM 5 Special Assistant to the Director, Office of White House Liaison
COM 12 Special Assistant to the Director, Office of External Affairs
COM 72 Director, Congressional Liaison to the Deputy Assistant Secretary for Program Research and Evaluation
COM 156 Confidential Assistant to the Assistant Secretary for Economic Development
COM 173 Senior Advisor to the Assistant Secretary for Economic Development
COM 181 Senior Advisor to the Assistant Secretary for Communications and Information
COM 193 Special Assistant to the Deputy Assistant Secretary for Service Industries, Tourism and Finance
COM 194 Special Assistant to the Chief of Staff
COM 205 Special Assistant to the Chief of Staff, Office of the Under Secretary for Oceans and Atmosphere
COM 225 Director, Congressional and Public Affairs to the Under Secretary for Export Administration, Bureau of Industry and Security
COM 228 Special Assistant for National Marine Fisheries Service to the Director, Office of Legislative Affairs
COM 232 Chief Counsel to the Assistant Secretary for Economic Development
COM 252 Confidential Assistant to the Director, Executive Secretariat
COM 259 Director of Congressional Affairs to the Under Secretary for International Trade
COM 261 Deputy Communications Director to the Director of Communications, International Trade Administration
COM 262 Special Assistant to the Deputy Assistant Secretary for Transportation and Machinery
COM 263 Special Assistant to the Assistant Secretary and Director General, United States and Foreign Commercial Service
COM 266 Senior Advisor to the Assistant Secretary for Import Administration
COM 267 Confidential Assistant to the Assistant Secretary for Export Administration
COM 273 Executive Assistant to the Assistant Secretary for Trade Development
COM 276 Executive Assistant to the Under Secretary for Economic Affairs
COM 282 Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 287 Confidential Assistant to the Assistant Secretary for Export Administration
COM 289 Intergovernmental Affairs Specialist to the Deputy Assistant Secretary for Intergovernmental Affairs
COM 290 Special Assistant to the Director, Office of Business Liaison
COM 291 Public Affairs Specialist to the Director, Office of Public Affairs
COM 292 Legislative Affairs Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 298 Special Assistant to the Assistant Secretary for Communications and Information, National Telecommunications and Information Administration
COM 302 Director of External Affairs to the Director of Public and Constituent Affairs
COM 308 Special Assistant to the Executive Director, Office of Export Assistance and Business
COM 309 Senior Advisor to the Director, Minority Business Development Agency
COM 317 Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration

COM 326 Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations
COM 342 Deputy Director to the Director, Office of the White House Liaison
COM 343 Confidential Assistant to the Deputy Assistant Secretary for Export Promotion Services
COM 350 Deputy Director to the Director, Office of Business Liaison
COM 352 Special Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 353 Confidential Assistant to the Deputy Assistant Secretary for Export Promotion Services
COM 354 Public Affairs Specialist to the Assistant Secretary for Communications and Information
COM 371 Policy Advisor to the Chief of Staff
COM 372 Senior Policy Advisor to the Under Secretary for Oceans and Atmosphere
COM 384 Public Affairs Specialist to the National Director, Minority Business Development Agency
COM 387 Confidential Assistant to the Director of Legislative Affairs
COM 393 Legislative Affairs Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 394 Deputy Director, to the Director Office of Public Affairs
COM 396 Congressional Affairs Specialist to the Director of Legislative Affairs
COM 402 Chief of Staff to the Under Secretary for Oceans and Atmospheres
COM 409 Confidential Assistant to the Executive Assistant to the Secretary
COM 410 Executive Assistant to the Under Secretary, International Trade Administration
COM 412 Director of Communications to the Assistant Secretary for Trade Development, International Trade Administration
COM 415 Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration
COM 423 Special Assistant to the Under Secretary and Director, Patent and Trademark Office
COM 424 Legislative Affairs Specialist to the Under Secretary for International Trade, International Trade Administration
COM 440 Special Assistant to the Director, Office of White House Liaison
COM 443 Director, Office of External Affairs to the Secretary of Commerce
COM 445 Public Affairs Specialist to the Assistant Secretary for Economic Development
COM 448 Confidential Assistant to the Assistant Secretary for Market Access and Compliance
COM 463 Confidential Assistant to the Director, Office of External Affairs
COM 467 Confidential Assistant to the Chief of Staff
COM 468 Special Assistant to the Under Secretary for Export Administration, Bureau of Export Administration
COM 490 Director of Scheduling to the Director, Office of External Affairs
COM 494 Deputy Press Secretary to the Assistant to the Secretary and Director of Policy and Strategic Planning
COM 495 Special Assistant, Liaison for Cabinet Affairs to the Chief of Staff
COM 504 Senior Analyst to the Under Secretary for Economic Affairs
COM 512 Special Advisor to the Under Secretary for Export Administration
COM 516 Legislative Affairs Specialist to the Director, Office of Legislative Affairs
COM 523 Press Secretary to the Director of Communications
COM 527 Executive Assistant to the Secretary of Commerce
COM 532 Senior Counsel to the General Counsel
COM 538 Chief of Protocol to the Chief of Staff
COM 544 Senior Advisor to the Under Secretary for Technology, International Trade Administration
COM 546 Special Assistant to the Director of External Affairs
COM 551 Legislative Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs, National Oceanic and Atmospheric Administration
COM 562 Special Assistant to the Chief of Staff
COM 573 Special Assistant to the Assistant Secretary and Director General, U.S. and Foreign Commercial Service
COM 574 Confidential Assistant to the Director, Office of Business Liaison
COM 576 Special Assistant to the Director, Office of Policy and Strategic Planning
COM 583 Special Assistant to the Chief Financial Officer and Assistant Secretary for Administration
COM 589 Policy Advisor to the Chief of Staff
COM 592 Special Assistant to the Assistant Secretary for Trade Development, International Trade Administration
COM 597 News Analyst to the Director, Office of Public Affairs
COM 604 Associate Under Secretary for Communications to the Under Secretary for Economic Affairs
COM 606 Speechwriter to the Director, Office of Public Affairs
COM 618 Special Assistant to the Director, Executive Secretariat Staff
COM 624 Senior Advisor to the Assistant Secretary for Economic Development
COM 625 Chief Information Officer to the Under Secretary of Technology
COM 626 Confidential Assistant to the Deputy Under Secretary for Technology
COM 629 Deputy Director to the Director, Office of Public Affairs, International Trade Administration
COM 646 Public Affairs Specialist to the Deputy Director of Public Affairs for Strategy
COM 648 Press Secretary to the Director of Public Affairs
COM 651 Public Affairs Specialist to the Press Secretary
COM 652 Confidential Assistant to the Director, Office of Public Affairs
COM 659 Director, Office of White House Liaison to the Chief of Staff
COM 662 Special Assistant to the Under Secretary for International Trade
COM 664 Special Assistant to the Assistant Secretary of Commerce Director General of the U.S. and Foreign Commercial Service
COM 676 Special Assistant to the Deputy Assistant Secretary for Energy, Environment and Materials
COM 677 Special Assistant to the Director, Office of Policy and Strategic Planning
COM 681 Special Assistant to the Assistant Secretary for Market Access and Compliance
COM 685 Deputy Director to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 686 Director of Advance and Special Assistant to the Secretary to the Director of External Affairs
COM 688 Confidential Assistant to the Assistant Secretary for Market Access and Compliance
COM 690 Special Assistant to the Assistant Secretary for Market Access and Compliance
COM 694 Chief, Congressional Affairs to the Under Secretary for Economic Affairs

Section 213.3315 Department of Labor

LAB 7 Special Assistant to the Chief of Staff
LAB 9 Staff Assistant to the Deputy Secretary
LAB 15 Special Assistant to the Assistant Secretary for Public Affairs

LAB 17 Senior Legislative Officers to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 24 Special Assistant to the Director of the Women's Bureau
LAB 25 Staff Assistant to the Assistant Secretary for Policy
LAB 44 Senior Intergovernmental Liaison to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 55 Special Assistant to the Assistant Secretary for Public Affairs
LAB 66 Special Assistant to the Deputy Assistant Secretary, Office of Federal Contract Compliance Programs, Employment Standards Administration
LAB 83 Special Assistant to the Assistant Secretary, Pension and Welfare Benefits Administration
LAB 91 Special Assistant to the Deputy Assistant Secretary for Disability Employment Policy
LAB 92 Special Assistant to the Director, 21st Century Workforce
LAB 93 Special Assistant to the Director of Scheduling and Advance
LAB 97 Special Assistant to the Assistant Secretary for Administration and Management
LAB 99 Special Assistant to the Assistant Secretary for Employment and Training
LAB 104 Secretary's Representative to the Assistant Secretary, Congressional and Intergovernmental Affairs
LAB 107 Secretary's Representative, Chicago, Illinois, to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 111 Secretary's Representative, San Francisco, California, to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 112 Secretary's Representative, Seattle, Washington, to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 113 Special Assistant to the Assistant Secretary, Disability Employment Policy
LAB 117 Special Assistant to the Deputy Assistant Secretary for Disability Employment Policy
LAB 118 Staff Assistant to the Chief of Staff
LAB 120 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 121 Staff Assistant to the Secretary of Labor
LAB 122 Senior Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 123 Special Assistant to the Assistant Secretary for Disability Employment Policy
LAB 125 Special Assistant to the Assistant Secretary for Public Affairs
LAB 126 Chief of Staff to the Deputy Assistant Secretary
LAB 130 Special Assistant to the Director of 21st Century Office
LAB 131 Special Assistant to the Assistant Secretary for Employment and Training Administration
LAB 132 Special Assistant to the Director, Office of Public Liaison
LAB 133 Special Assistant to the Director, Women's Bureau
LAB 135 Special Assistant to the Assistant Secretary for Office of Congressional and Intergovernmental Affairs
LAB 137 Speechwriter to the Assistant Secretary for Public Affairs
LAB 138 Special Assistant to the Assistant Secretary for Mine Safety and Health
LAB 139 Special Assistant to the Assistant Secretary for Public Affairs
LAB 145 Research Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 147 Attorney-Advisor (Labor) to the Solicitor of Labor
LAB 149 Special Assistant to the Director, Women's Bureau
LAB 152 Special Assistant to the Director, Women's Bureau
LAB 154 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 163 Special Assistant to the Assistant Secretary for Occupational Safety and Health
LAB 168 Chief of Staff to the Assistant Secretary for Policy
LAB 169 Deputy Director, Executive Secretariat to the Executive Secretary
LAB 171 Staff Assistant to the Director of Scheduling and Advance
LAB 172 Special Assistant to the Secretary of Labor
LAB 174 Staff Assistant to the Secretary of Labor
LAB 175 Senior Policy Analyst to the Assistant Secretary for Policy
LAB 176 Speech Writer to the Assistant Secretary for Public Affairs
LAB 177 Speech Writer to the Assistant Secretary for Public Affairs
LAB 182 Staff Assistant to the White House Liaison
LAB 183 Special Assistant to the Assistant Secretary for Occupational Safety and Health
LAB 185 Deputy Director to the Director, Office of Faith-Based and Community Initiatives
LAB 187 Special Assistant to the Assistant Secretary for Employment and Training
LAB 189 Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration
LAB 190 Chief of Staff to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs
LAB 191 Chief Economist to the Assistant Secretary for Policy
LAB 192 Special Assistant to the Assistant Secretary, Pension and Welfare Benefits
LAB 194 Director of Scheduling and Advance to the Secretary of Labor
LAB 195 Special Assistant to the Deputy Assistant Secretary for Employment and Training
LAB 197 Research Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 199 Research Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 203 Special Assistant to the Assistant Secretary for Veterans' Employment and Training
LAB 204 Special Assistant to the Assistant Secretary for Veterans' Employment and Training
LAB 205 Staff Assistant to the Executive Assistant
LAB 208 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 209 Special Assistant to the Assistant Secretary for Veterans' Employment and Training
LAB 210 Special Assistant to the Secretary of Labor
LAB 211 Staff Assistant to the Executive Secretary
LAB 212 Associate Deputy Secretary to the Deputy Secretary
LAB 214 Staff Assistant to the Director, Office of Faith-Based Initiatives
LAB 215 Special Assistant to the Assistant Secretary for Occupational Safety and Health
LAB 217 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 218 Staff Assistant to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs
LAB 220 Special Assistant to the Assistant Secretary for Public Affairs
LAB 222 Staff Assistant to the Deputy Secretary of Labor
LAB 224 Staff Assistant to the Assistant Secretary for Mine Safety and Health
LAB 230 Special Assistant to the Deputy Secretary of Labor
LAB 231 Staff Assistant to the Chief of Staff
LAB 237 Special Assistant to the Director, 21st Century Workforce

LAB 239 Associate Deputy Secretary to the Deputy Secretary of Labor
LAB 241 Special Assistant to the Assistant Secretary for Public Affairs
LAB 242 Special Assistant to the Assistant Secretary for Policy
LAB 244 Staff Assistant to the Director of Scheduling
LAB 245 Special Assistant to the Director, Office of Faith-Based and Community Initiatives
LAB 246 Staff Assistant to the Director, 21st Century Workforce
LAB 247 Research Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 249 Research Assistant to the Assistant Secretary, Office of Congressional and Intergovernmental Relations
LAB 254 Senior Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 255 Staff Assistant to the Director, 21st Century Workforce
LAB 256 Special Assistant to the Deputy Assistant Secretary, Office of Labor Management Standards
LAB 265 Staff Assistant to the Deputy Assistant Secretary, Office of Labor-Management Standards
LAB 266 Special Assistant to the Deputy Under Secretary for International Labor Affairs
LAB 267 Special Assistant to the Assistant Secretary for Administration and Management
LAB 270 Special Assistant to the Assistant Secretary for Employment and Training Administration
LAB 273 Special Assistant to the Assistant Secretary for Administration and Management
LAB 277 Special Assistant to the Assistant Secretary for Administration Management
LAB 278 Special Assistant to the Chief Financial Officer

Section 213.3316 Department of Health and Human Services

HHS 2 Special Assistant to the Chief of Staff
HHS 14 Director, Correspondence Control Center to the Executive Secretary
HHS 17 Director of Scheduling to the Chief of Staff
HHS 31 Special Assistant to the Secretary of Health and Human Services
HHS 53 Special Assistant to the Administrator, Human Resources and Services Administration
HHS 187 Special Assistant to the Deputy Assistant Secretary for Legislation
HHS 204 Special Assistant to the White House Liaison for Political Personnel, Boards and Commissioners
HHS 236 Secretary's Regional Representative to the Director of Intergovernmental Affairs
HHS 237 Secretary's Regional Representative to the Director of Intergovernmental Affairs
HHS 240 Secretary's Regional Representative to the Director of Intergovernmental Affairs
HHS 243 Secretary's Regional Representative, Atlanta GA, to the Director of Intergovernmental Affairs
HHS 244 Secretary's Regional Representative, Seattle, WA, to the Director of Intergovernmental Affairs
HHS 247 Secretary's Regional Representative, Philadelphia, PA to the Director of Intergovernmental Affairs
HHS 252 Secretary's Regional Representative, Washington, DC to the Director of Intergovernmental Affairs
HHS 255 Secretary's Regional Representative, Chicago, Il, to the Director of Intergovernmental Affairs
HHS 268 Special Assistant to the Executive Secretary, Office of the Secretary
HHS 293 Special Assistant to the Commissioner, Administration for Children, Youth and Families
HHS 307 Deputy Director to the Director of the Center for Faith-Based and Community Initiatives
HHS 315 Special Assistant to the Director, Office of Intergovernmental Affairs
HHS 331 Special Assistant to the Administrator, Centers for Medicare and Medicaid Services
HHS 332 Associate Commissioner Children's Bureau to the Commissioner, Administration for Children Youth and Families
HHS 334 Director, Office of International and Refugees Health to the Assistant Secretary for Health
HHS 336 Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services)
HHS 346 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison)
HHS 347 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation, Office of Congressional Liaison
HHS 359 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison)
HHS 361 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison)
HHS 374 Confidential Assistant to the Executive Secretary
HHS 378 Special Assistant to the Assistant Secretary for Public Affairs
HHS 383 Special Assistant to the Assistant Secretary for Public Affairs
HHS 399 Special Assistant to the Assistant Secretary for Children and Families, Administration for Children and Youth Families
HHS 412 Secretary's Regional Representative to the Director of Intergovernmental Affairs
HHS 417 Secretary's Regional Representative to the Director of Intergovernmental Affairs
HHS 427 Executive Director, President's Committee on Mental Retardation to the Assistant Secretary for Children and Families
HHS 436 Associate Commissioner to the Commissioner, Administration for Children, Youth and Families
HHS 497 Special Assistant for International and Immigration Issues to the Assistant Secretary, Administration for Children and Families
HHS 523 Executive Director, President's Council on Physical Fitness and Sports to the Assistant Secretary for Health
HHS 525 Confidential Assistant to the Chief Operating Officer and Deputy Administrator
HHS 527 Confidential Assistant (Scheduling) to the Director of Scheduling
HHS 539 Special Assistant to the General Counsel
HHS 541 Special Assistant to the Deputy Director, Office of Child Support Enforcement
HHS 549 Speechwriter to the Assistant Secretary for Public Affairs
HHS 553 Director of Communications to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
HHS 556 Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs (Media)
HHS 570 Confidential Assistant (Advance) to the Director of Scheduling
HHS 589 Senior Speechwriter to the Assistant Secretary for Public Affairs
HHS 615 Confidential Assistant to the Director of Communications
HHS 628 Special Assistant to the Administrator, Substance Abuse and Mental Health Services Administration
HHS 629 Executive Director, President's Commission of HIV/AIDS to the Assistant Secretary for Health
HHS 632 Special Outreach Coordinator to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)

HHS 636 Senior Advisor to the Director, Indian Health Service
HHS 638 Special Assistant to the Deputy Assistant Secretary for Policy and External Affairs, Administration for Children and Families
HHS 659 Counselor to the Deputy Secretary
HHS 661 Special Assistant to the Deputy Secretary of Health and Human Services
HHS 664 Deputy Director for Operations to the Director, Office of Intergovernmental Affairs
HHS 665 Deputy Director for Policy to the Director of Intergovernmental Affairs
HHS 667 Confidential Assistant to the Executive Secretary
HHS 672 Deputy Director to the Director of Scheduling
HHS 675 Special Assistant to the Assistant Secretary for Aging
HHS 682 Executive Director, President's Advisory Commission and White House Initiative on Asian Americans and Pacific Islanders to the Director, Office of Intergovernmental Affairs

Section 213.3317 Department of Education

EDU 2 Deputy Assistant Secretary to the Assistant Secretary, Legislation and Congressional Affairs
EDU 4 Special Assistant to the Director, White House Liaison
EDU 6 Confidential Assistant to the Chief of Staff to the Under Secretary
EDU 8 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 9 Special Assistant to the Director, Office of Public Affairs (Communications Director)
EDU 11 Steward to the Chief of Staff
EDU 12 Deputy Secretary's Regional Representative, Region IV to the Deputy Assistant Secretary for Regional Services
EDU 15 Special Assistant to the Secretary's Regional Representative, Atlanta, Georgia
EDU 16 Confidential Assistant to the Chief of Staff
EDU 21 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs
EDU 25 Executive Assistant to the Deputy Secretary
EDU 26 Special Assistant to the Deputy Secretary
EDU 28 Deputy to the Secretary's Regional Representative, Dallas, Texas
EDU 29 Special Assistant to the Deputy Secretary
EDU 31 Counselor to the Deputy Secretary
EDU 32 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 33 Deputy Assistant Secretary for Regional Services to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs
EDU 37 Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison to the Assistant Secretary, Office for Intergovernmental and Interagency Affairs
EDU 38 Secretary's Regional Representative, Region I to the Deputy Assistant Secretary for Regional Services
EDU 40 Special Assistant to the Secretary of Education
EDU 41 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs
EDU 44 Special Assistant to the Deputy Secretary
EDU 45 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative
EDU 46 Special Assistant to the Assistant Secretary for Legislation and Congressional Affairs
EDU 48 Special Assistant to the General Counsel
EDU 49 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education
EDU 50 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education
EDU 51 Confidential Assistant to the Director of Scheduling and Briefing
EDU 52 Deputy Director to the Director, Office of Bilingual Education and Minority Language Affairs
EDU 54 Special Assistant to the Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison
EDU 55 Secretary's Regional Representative, Region VIII to the Deputy Assistant Secretary for Regional Services
EDU 57 Special Assistant to the Deputy Assistant Secretary for Regional Services
EDU 58 Confidential Assistant to the Deputy Assistant Secretary for Enforcement
EDU 59 Special Assistant to the Chief of Staff
EDU 60 Press Secretary to the Director, Office of Public Affairs
EDU 61 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 62 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 63 Confidential Assistant to the Counselor to the Secretary
EDU 64 Secretary's Regional Representative, Region II to the Deputy Assistant Secretary for Regional Services
EDU 66 Confidential Assistant to the Chief of Staff
EDU 67 Confidential Assistant to the Senior Advisor to the Secretary of Education
EDU 68 Confidential Assistant to the Chief of Staff to the Deputy Secretary
EDU 69 Special Assistant to the Chief of Staff
EDU 71 Special Assistant to the Director, Office of Public Affairs
EDU 72 Confidential Assistant to the Director, Office of Bilingual and Minority Languages Affairs
EDU 73 Special Assistant to the Commissioner of Rehabilitative Service Administration
EDU 74 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education
EDU 75 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
EDU 76 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 77 Special Assistant to the Director, Scheduling and Briefing Staff
EDU 78 Special Assistant to the Deputy Assistant Secretary for Regional Services
EDU 79 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 80 Confidential Assistant to the Chief of Staff to the Deputy Secretary
EDU 83 Special Assistant to the Chief of Staff
EDU 85 Secretary's Regional Representative, San Francisco, California, to the Deputy Secretary for Regional Services
EDU 86 Special Assistant to the Assistant Secretary for Management
EDU 87 Confidential Assistant to the Assistant Secretary for Management
EDU 88 Special Assistant to the Deputy Secretary
EDU 89 Special Assistant to the Assistant Secretary for Postsecondary Education
EDU 92 Secretary's Regional Representative, Region V to the Deputy Assistant Secretary for Regional Services
EDU 93 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
EDU 96 Special Assistant to the Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison
EDU 101 Special Assistant to the Chief of Staff

EDU 102 Confidential Assistant to the Chief of Staff
EDU 103 Special Assistant to the Assistant Secretary for Vocational and Adult Education
EDU 104 Special Assistant to the Senior Advisor to the Secretary
EDU 106 Special Assistant to the Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison
EDU 107 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
EDU 108 Special Assistant to the Assistant Secretary for Postsecondary Education
EDU 109 Confidential Assistant to the Assistant Secretary for Postsecondary Education
EDU 110 Special Assistant to the Director, Office of Public Affairs
EDU 112 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education
EDU 113 Special Assistant to the Director, Office of Public Affairs
EDU 115 Secretary's Regional Representative, Region X to the Deputy Assistant Secretary for Regional Services
EDU 116 Secretary's Regional Representative to the Deputy Assistant Secretary for Regional Services
EDU 117 Confidential Assistant to the Director, Office of Public Affairs
EDU 119 Special Assistant to the Chief of Staff
EDU 120 Director, Office of Scheduling and Briefing to the Chief of Staff
EDU 122 Secretary's Regional Representative, Region 7 to the Deputy Assistant Secretary for Regional Services
EDU 123 Confidential Assistant to the Assistant Secretary for Vocational and Adult Education
EDU 124 Special Assistant to the Assistant Secretary for Postsecondary Education
EDU 125 Special Assistant (Executive Assistant) to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs
EDU 126 Deputy Secretary's Regional Representative, Region I to the Deputy Assistant Secretary for Regional Services
EDU 127 Special Assistant to the Assistant Secretary for Vocational and Adult Education
EDU 128 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services
EDU 129 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services
EDU 130 Special Assistant to the Director, Office English Language Acquisition
EDU 131 Special Assistant to the Assistant Secretary for Civil Rights
EDU 132 Confidential Assistant to the Deputy Assistant Secretary, Office of Special Education and Rehabilitative Services
EDU 133 Special Assistant to the Deputy Secretary
EDU 135 Confidential Assistant to the Executive Assistant Office of Intergovernmental Affairs
EDU 137 Special Assistant to the Chief of Staff
EDU 138 Special Assistant to the Chief of Staff
EDU 139 Deputy Chief of Staff for Strategy/Policy to the Chief of Staff
EDU 140 Deputy Chief of Staff for Operations to the Chief of Staff
EDU 142 Secretary's Regional Representative, Region IV, Atlanta, Georgia to the Deputy Assistant Secretary for Regional Services
EDU 143 Confidential Assistant to the Director, Faith-Based and Community Initiatives Center
EDU 144 Special Assistant to the Director, White House Initiatives on Hispanic Education
EDU 146 Confidential Assistant to the Director, White House Initiatives on Hispanic Education
EDU 148 Director, White House Initiatives on Hispanic Education to the Secretary of Education
EDU 149 Confidential Assistant to the Director, White House Initiatives on Tribal Colleges and Universities
EDU 150 Special Assistant to the Director, White House Initiatives on Tribal Colleges and Universities
EDU 151 Special Assistant to the Chief of Staff
EDU 152 Confidential Assistant to the Director, Faith Based and Community Initiatives Center
EDU 153 Confidential Assistant to the Director, Faith-Based and Community Initiatives Center
EDU 154 Director, Faith-Based and Community Initiatives Center to the Secretary of Education
EDU 155 Special Assistant to the Director, White House Initiatives on Hispanic Education
EDU 156 Confidential Assistant to the Director, White House Initiatives on Hispanic Education
EDU 157 Confidential Assistant to the Director, White House Initiatives on Hispanic Education
EDU 158 Confidential Assistant to the Chief of Staff
EDU 159 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
EDU 164 Confidential Assistant to the Chief of Staff
EDU 166 Executive Assistant to the Assistant Secretary for Postsecondary Education
EDU 171 Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 175 Special Assistant to the Assistant Secretary, Office of Vocational and Adult Education
EDU 176 Confidential Assistant to the Deputy Assistant Secretary for Legislation and Congressional Affairs
EDU 180 Confidential Assistant to the Deputy Assistant Secretary for Regional Services

Section 213.3318 Environmental Protection Agency

EPA 1 Special Assistant (Advance Person) to the Administrator
EPA 5 Director, Office of Information and Special Initiatives to the Associate Administrator for the Office of Public Affairs
EPA 10 Program Advisor (Press Officer) to the Associate Administrator for Communications, Education and Media Relations
EPA 14 Special Assistant to the Associate Administrator for Congressional and Intergovernmental Relations
EPA 18 Special Assistant to the Administrator
EPA 39 Special Assistant to the Associate Administrator for the Office of Communications, Education and Media Relations
EPA 41 Deputy Associate Assistant Administrator to the Associate Administrator, Office of Public Affairs
EPA 42 Director of Scheduling to the Associate Administrator for the Office of Public Affairs
EPA 50 Program Assistant to the Assistant Administrator for Air and Radiation
EPA 52 Special Assistant to the Associate Administrator for Communications, Education, and Media Relations
EPA 56 Program Advisor (Publications) to the Associate Administrator for Communications, Education and Media Relations
EPA 61 Program Advisor to the Assistant Administrator for Policy, Economics and Innovation
EPA 62 Public Affairs Specialist to the Associate Administrator
EPA 63 Special Assistant to the Director of Operations
EPA 64 Associate Assistant Administrator to the Assistant Administrator for Office of Prevention, Pesticides and Toxic Substances

EPA 65 Recycling Communications Advisor to the Deputy Director, Office of Solid Waste and Emergency Response
EPA 68 Associate Assistant Administrator to the Assistant Administrator for Solid Waste and Emergency Response
EPA 69 Special Assistant for Communications to the Assistant Administrator, Office of Water
EPA 70 Associate Regional Administrator to the Regional Administrator, Middle Atlantic Region
EPA 71 Senior Advisor to the Assistant Administrator for International Activities
EPA 72 Director, Office of Regional Operations to the Associate Administrator for Congressional and Intergovernmental Relations
EPA 73 Senior Advisor on Outreach to the Assistant Administrator for Solid Waste and Emergency Response
EPA 74 Policy Analyst to the Assistant Administrator, Office of Air and Radiation
EPA 75 Deputy Associate Administrator to the Associate Administrator, Office of Congressional Affairs
EPA 76 Senior Counsel to the Associate Administrator for Congressional and Intergovernmental Relations
EPA 77 Special Assistant to the General Counsel
EPA 78 Program Advisor (Advance Person) to the Administrator
EPA 81 Director, Advance Staff to the Director of Long-Range Communications Planning
EPA 82 Special Assistant to the Associate Administrator for the Office of Public Affairs
EPA 83 Director of Long Term Communication Planning to the Administrator

Section 213.3323 Federal Communications Commission

FCC 5 Special Assistant to the Director, Office of Media Relations
FCC 6 Deputy Director to the Director, Office of Legislative and Intergovernmental Affairs
FCC 7 Senior Advisor to the Director, Office of Legislative and Intergovernmental Affairs

Section 213.3323 Overseas Private Investment Corporation

OPIC 18 Executive Assistant to the President and Chief Executive Officer
OPIC 19 Confidential Assistant to the Chief of Staff
OPIC 20 Executive Assistant to the Executive Vice President
OPIC 21 Confidential Assistant to the Chief of Staff

Section 213.3325 United States Tax Court

TCOUS 42 Secretary and Confidential Assistant to a Judge
TCOUS 43 Secretary and Confidential Assistant to a Judge
TCOUS 44 Secretary and Confidential Assistant to a Judge
TCOUS 45 Secretary and Confidential Assistant to a Judge
TCOUS 46 Secretary and Confidential Assistant to a Judge
TCOUS 47 Secretary and Confidential Assistant to a Judge
TCOUS 49 Secretary and Confidential Assistant to a Judge
TCOUS 50 Secretary and Confidential Assistant to a Judge
TCOUS 51 Secretary and Confidential Assistant to a Judge
TCOUS 52 Secretary and Confidential Assistant to a Judge
TCOUS 53 Secretary and Confidential Assistant to a Judge
TCOUS 56 Secretary and Confidential Assistant to a Judge
TCOUS 59 Secretary and Confidential Assistant to a Judge
TCOUS 60 Secretary and Confidential Assistant to a Judge
TCOUS 61 Secretary and Confidential Assistant to a Judge
TCOUS 62 Secretary and Confidential Assistant to a Judge
TCOUS 63 Secretary and Confidential Assistant to a Judge.
TCOUS 64 Secretary and Confidential Assistant to a Judge
TCOUS 65 Secretary and Confidential Assistant to a Judge
TCOUS 66 Trial Clerk to a Judge
TCOUS 68 Trial Clerk to a Judge
TCOUS 69 Trial Clerk to a Judge
TCOUS 70 Trial Clerk to a Judge
TCOUS 72 Trial Clerk to a Judge
TCOUS 73 Trial Clerk to a Judge
TCOUS 77 Trial Clerk to a Judge
TCOUS 78 Trial Clerk to a Judge
TCOUS 82 Secretary and Confidential Assistant to a Judge

Section 213.3327 Department of Veterans Affairs

VA 5 Special Assistant to the Secretary of Veteran Affairs
VA 8 Special Assistant to the Dean, Veteran Affairs Learning University
VA 15 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
VA 30 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
VA 34 Director, Congressional Affairs to the Assistant Secretary for Congressional and Legislative Affairs
VA 42 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
VA 56 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
VA 72 Special Assistant to the Assistant Secretary for Congressional and Legislative Affairs
VA 73 Special Assistant (Deputy White House Liaison) to the Deputy Assistant Secretary for Public Affairs
VA 75 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
VA 81 Special Assistant to the Special Assistant (Supervisor Regional Veterans Service Liaison Officer)
VA 85 Special Assistant (Supervisory Regional Veterans Service Liaison Officer) to the Assistant Secretary for Public and Intergovernmental Affairs
VA 96 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
VA 99 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
VA 106 Special Assistant to the Assistant Secretary for Congressional and Legislative Affairs

Section 213.3328 Broadcasting Board of Governors

BBG 4 Staff Director to the Director, Office the Advisory Board for Cuba Broadcasting
BBG 5 Senior Projects Officer to the Director, Voice of America
BBG 6 Senior Projects Officer to the Director, Voice of America

Section 213.3330 Securities and Exchange Commission

SEC 2 Confidential Assistant to a Commissioner
SEC 3 Confidential Assistant to a Commissioner
SEC 4 Director of Legislative Affairs to the Director of Communications
SEC 8 Secretary (OA) to the Chief Accountant
SEC 9 Secretary to the General Counsel
SEC 11 Confidential Assistant to the Chairman
SEC 12 Deputy Director to the Director of Public Affairs
SEC 14 Secretary to the Director, Market Regulation
SEC 16 Secretary to the Director, Enforcement
SEC 18 Secretary to the Director, Division of Investment Management
SEC 19 Secretary to the Director, Corporation Finance
SEC 28 Confidential Assistant to the Chairman of the Securities and Exchange Commission

SEC 29 Secretary to the Deputy Director of Market Regulation
SEC 32 Director of Public Affairs to the Director of Communications
SEC 39 Director of Communications to the Chairman
SEC 41 Senior Advisor for Legislative Affairs to the Director of Communications

Section 213.3331 Department of Energy

DOE 103 Special Assistant to the Director, Civilian Radioactive Waste Management
DOE 104 Special Assistant to the Director, Office of Public Affairs
DOE 114 Special Assistant to the Director, Office of Public Affairs
DOE 115 Special Advisor to the Chief of Staff
DOE 116 Special Assistant to the Administrator, Energy Information Administration
DOE 121 Special Assistant to the Director, Office of Scheduling and Advance
DOE 124 Congressional Affairs Officer to the Director, Special Assistant for Congressional Affairs, National Nuclear Security Administration
DOE 128 Senior Policy Advisor to the Secretary
DOE 129 Special Assistant to the Chief Information Officer
DOE 134 Special Assistant to the Assistant Secretary for Fossil Energy
DOE 139 Public Affairs Specialist to the Director, Office of Public Affairs
DOE 140 Senior Advisor to the Director, Office of Nuclear Energy, Science and Technology
DOE 141 Special Assistant to the Principal Deputy Assistant Secretary, Office of Congressional and Intergovernmental Affairs
DOE 147 Staff Assistant to the Assistant Secretary for Fossil Energy
DOE 150 Senior Advisor to the Principal Deputy Assistant Secretary
DOE 151 Special Projects Officer to the Director, Office of Public Affairs
DOE 173 Senior Policy Advisor to the Secretary of Energy
DOE 174 Senior Policy Advisor to the Secretary of Energy
DOE 180 Deputy Director to the Director, Public Affairs
DOE 186 Executive Assistant to the Under Secretary
DOE 189 Assistant Secretary for International Affairs
DOE 201 Special Assistant to the Assistant Secretary for Environment, Safety and Health
DOE 204 Special Assistant to the Assistant Secretary for Fossil Energy
DOE 205 Senior Advisor, Legislative Affairs to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 206 Chief of Staff to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 207 Trip Coordinator to the Deputy Director for Advance
DOE 209 Deputy Director of Scheduling to the Director of Scheduling and Advance
DOE 211 Daily Scheduler to the Director of Scheduling and Advance
DOE 212 Senior Advisor, Communications to the Principal Deputy Assistant Secretary for Energy, Efficiency and Renewable Energy
DOE 213 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DOE 215 Staff Assistant to the Director, Office of Scheduling and Advance
DOE 216 Special Assistant to the Secretary of Energy
DOE 217 Director, Press Office to the Director, Office of Public Affairs
DOE 218 Special Assistant for Communications to the Director, Office of Civilian Radioactive Waste Management
DOE 220 Policy Advisor to the Secretary of Energy
DOE 221 Senior Policy Advisor to the Assistant Secretary for Environmental Management
DOE 222 Special Assistant to the Secretary of Energy
DOE 224 Senior Policy Advisor for North American Affairs to the Assistant Secretary for Policy and International Affairs
DOE 225 Senior Policy Advisor for Middle East Affairs to the Assistant Secretary for Policy and International Affairs
DOE 226 Senior Advisor to the Executive Director for the Secretary of Energy Advisory Board
DOE 228 Chief of Staff to the Director, Office of Economic Impact and Diversity
DOE 230 Deputy Assistant Secretary, Senate Liaison to the Assistant Secretary for Congressional and Intergovernmental Affairs
DOE 232 Special Assistant to the Assistant Secretary for Fossil Energy
DOE 233 Special Assistant to the Assistant Secretary for Policy and International Affairs
DOE 234 Program Manager (Energy Reliability) to the Director, Office of Security
DOE 235 Special Assistant to the Assistant Secretary for Energy and Renewable Energy
DOE 237 Policy Advisor to the Secretary of Energy
DOE 238 Deputy Director to the Director, Office of Economic Impact and Diversity
DOE 240 White House Liaison to the Secretary of Energy
DOE 241 Special Assistant to the Deputy Secretary of Energy
DOE 242 Policy Advisor to the Director, Office of Worker and Community Transition
DOE 243 Special Assistant for Intergovernmental Affairs to the Assistant Secretary for Environmental Management
DOE 244 Congressional Affairs Officer to the Assistant Secretary for Fossil Energy
DOE 245 Senior Policy Advisor to the Assistant Secretary for Fossil Energy
DOE 246 Trip Coordinator to the Director, Office of Scheduling and Advance
DOE 247 Advance and Trip Coordinator to the Director, Office of Scheduling and Advance
DOE 248 Deputy Director of Advance for Strategic Initiatives to the Director, Office of Scheduling and Advance
DOE 249 Deputy Director of Advance for Operations to the Director, Office of Scheduling and Advance
DOE 250 Confidential Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DOE 251 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DOE 252 Special Assistant to the Deputy Assistant Secretary for Policy, Planning and Budget
DOE 253 Director of Intergovernmental Affairs to the Deputy Assistant Secretary for Intergovernmental and External Affairs
DOE 255 Senior Policy Advisor to the Assistant Secretary for Policy and International Affairs
DOE 256 Intergovernmental Liaison Officer to the Deputy Assistant Secretary for Intergovernmental and External Affairs
DOE 257 Deputy Assistant Secretary for National Security to the Assistant Secretary for Congressional and Intergovernmental Affairs
DOE 259 Deputy Assistant Secretary for Energy Policy to the Assistant Secretary for Congressional and Intergovernmental Affairs
DOE 260 Senior Policy Advisor to the Assistant Secretary for Congressional and Intergovernmental Affairs
DOE 261 Associate Deputy Assistant Secretary to the Deputy Assistant Secretary for Energy Policy
DOE 262 Deputy Assistant Secretary for Budget and Appropriations to the Assistant Secretary for Congressional and Intergovernmental Affairs

DOE 263 Congressional Liaison Officer to the Deputy Assistant Secretary for Environment and Science
DOE 264 Senior Policy Advisor to the Chief Financial Officer/Director, Office of Management Budget and Evaluation
DOE 265 Senior Advisor, Congressional and Intergovernmental Affairs to the Director, Office of Science
DOE 266 Senior Advisor to the Assistant Secretary for Environmental Management
DOE 267 Special Assistant to the Assistant Secretary for Fossil Energy
DOE 268 Senior Manager of Public Affairs, National Nuclear Security Administration to the Director, Congressional, Intergovernmental and Public Affairs

Federal Energy Regulatory Commission

FERC 1 Regulatory Policy Analyst to the Director, Office of Markets, Tariffs and Rates
FERC 2 Confidential Assistant to a Member of the Commission
FERC 3 Confidential Assistant to a Member of the Commission

Section 213.3332 Small Business Administration

SBA 10 Special Assistant to the Chief Operating Officer
SBA 12 Director of Advisory Councils to the Associate Administrator for Communications and Public Liaison
SBA 18 Special Assistant to the Administrator
SBA 20 Senior Advisor to the Associate Deputy Administrator for Government Contracting and Business Development
SBA 30 Senior Advisor to the Associate Deputy Administrator for Government Contracting and Business Development
SBA 39 Assistant Administrator for Public Communications to the Associate Administrator for Communications and Public Liaison
SBA 63 Special Assistant to the Associate Administrator for Communications and Public Liaison
SBA 76 Special Assistant to the Associate Administrator for Women's Business Ownership
SBA 84 Director of International Trade to the Associate Deputy Administrator for Capital Access
SBA 92 Special Assistant (Scheduling) to the Administrator
SBA 98 Staff Assistant to the Administrator
SBA 124 Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs
SBA 134 Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs
SBA 143 Policy Advisor to the Administrator
SBA 145 Senior Advisor to the Assistant Administrator for International Trade
SBA 146 Special Assistant to the Assistant Administrator for Communications and Public Liaison
SBA 153 Deputy Director to the Director of Intergovernmental Affairs
SBA 155 Special Assistant to the Assistant Administrator for International Trade
SBA 157 Senior Advisor to the Associate Deputy Administrator for Capital Access
SBA 160 Senior Advisor to the Assistant Administrator for International Trade
SBA 169 Regional Administrator, Region I, Boston, MA to the Associate Administrator for Field Operations
SBA 170 Regional Administrator, Region VIII, Denver, CO, to the Associate Administrator for Field Operations
SBA 171 Regional Administrator, Region VII, Kansas, MS, to the Associate Administrator for Field Operations
SBA 173 Regional Administrator, Region VI, Dallas, TX, to the Associate Administrator for Field Operations
SBA 174 Regional Administrator, Region V, Chicago, IL to the Associate Administrator for Field Operations
SBA 175 Regional Administrator, Region IV, Atlanta, GA, to the Associate Administrator for Field Operations
SBA 176 Regional Administrator, Region II, New York, NY, to the Associate Administrator, Field Operations
SBA 179 Deputy Press Secretary and Senior Advisor to the Associate Administrator for Communications and Public Liaison
SBA 188 Regional Administrator, Region IX, San Francisco, CA to the Associate Administrator for Field Operations
SBA 189 Regional Administrator, Region X, Seattle, WA, to the Associate Administrator for Field Operations
SBA 208 Special Assistant to the Associate Deputy Administrator of Entrepreneurial Development
SBA 216 Senior Policy Advisor to the Administrator

Section 213.3333 Federal Deposit Insurance Corporation

FDIC 11 Secretary to the Chairman

Section 213.3334 Federal Trade Commission

FTC 1 Director, Office of Public Affairs to the Chairman
FTC 2 Congressional Liaison Specialist to the Director, Office of Congressional Relations
FTC 3 Secretary, to the Director, Bureau of Competition
FTC 4 Deputy Director to the Director, Office of Public Affairs
FTC 5 Consumer Liaison Specialist to the Director, Office of Education
FTC 23 Special Assistant to a Commissioner
FTC 26 Confidential Assistant to a Commissioner
FTC 27 Confidential Assistant to a Commissioner

Section 213.3337 General Services Administration

GSA 24 Special Assistant to the Chief of Staff, Public Building Service
GSA 26 Special Assistant to the Chief of Staff, Public Buildings Service
GSA 44 Senior Policy Advisor to the Administrator
GSA 69 Events Management Specialist to the Director of External Affairs
GSA 75 Chief Technology Officer to the Associate Administrator for Communications
GSA 89 Confidential Assistant to the Administrator
GSA 90 Deputy Associate Administrator to the Associate Administrator for Congressional and Intergovernmental Affairs
GSA 94 Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs
GSA 95 White House Liaison to the Chief of Staff
GSA 119 Senior Advisor to the Regional Administrator, Great Lakes Region
GSA 131 Director of External Affairs to the Associate Administrator for Communications

Section 213.3339 U.S. International Trade Commission I

TC 5 Executive Assistant to a Commissioner
ITC 6 Staff Assistant (Economics) to a Commissioner
ITC 15 Executive Assistant to a Commissioner
ITC 18 Staff Assistant (Legal) to a Commissioner
ITC 19 Staff Economist to a Commissioner
ITC 22 Staff Assistant to a Commissioner
ITC 25 Staff Assistant (Economics) to the Chairman

ITC 30 Confidential Assistant to a Commissioner
ITC 31 Executive Assistant to a Commissioner
ITC 36 Executive Assistant to a Commissioner

Section 213.3340 National Archives and Records Administration

NARA 3 Presidential Diarist to the Archivist of the United States

Section 213.3342 Export-Import Bank of the United States

EXIM 44 Special Assistant to the Vice President of Public Affairs
EXIM 45 Administrative Assistant to the Director, a Member of the Board of Directors
EXIM 50 Administrative Specialist to the Executive Assistant to the President and Chairman
EXIM 53 Administrative Assistant to a Member, Board of Directors
EXIM 54 Special Assistant to the Vice President for Congressional and External Affairs

Section 213.3343 Farm Credit Administration

FCA 4 Secretary to the Chairman and CEO
FCA 13 Executive Assistant to a Board Member
FCA 15 Public Affairs Specialist to the Director, Office of Congressional and Public Affairs
FCA 16 Executive Assistant to the Chairman

Section 213.3344 Occupational Safety and Health Review Commission

OSHRC 2 Confidential Assistant to the Chairman

Section 213.3346 Selective Service System

SSS 16 Special Assistant to the Director of Selective Service

Section 213.3348 National Aeronautics and Space Administration

NASA 6 Chief of Staff to the Associate Administrator for Legislative Affairs
NASA 13 Staff Support Specialist to the Associate Administrator for Public Affairs
NASA 14 Special Assistant to the Assistant Administrator for Legislative Affairs
NASA 18 Confidential Assistant to the Administrator
NASA 19 Senior Policy Analyst to the Assistant Administrator for Public Affairs
NASA 20 Writer-Editor to the Assistant Administrator for Public Affairs
NASA 21 Industrial Relations Specialist to the Assistant Administrator for External Affairs
NASA 22 Media Relations Specialist to the Assistant Administrator for Public Affairs

Section 213.3351 Federal Mine Safety and Health Review Commission

FM 17 Confidential Assistant to the Chairman
FM 24 Confidential Assistant to the Chairman
FM 26 Attorney-Advisor (General) to the Chairman
FM 29 Attorney-Advisor to a Commissioner

Section 213.3355 Social Security Administration

SSA 1 Special Assistant to the Deputy Commissioner for Legislation and Congressional Affairs
SSA 2 Special Assistant to the Deputy Commissioner for Communications
SSA 3 Special Assistant to the Commissioner

Section 213.3356 Commission on Civil Rights

CCR 1 Special Assistant to a Commissioner
CCR 10 Special Assistant to the Staff Director
CCR 11 Special Assistant to a Commissioner
CCR 12 Special Assistant to a Commissioner
CCR 13 Special Assistant to a Commissioner
CCR 30 Special Assistant to the Staff Director
CCR 33 Special Assistant to a Commissioner

Section 213.3357 National Credit Union Administration

NCUA 18 Special Assistant for Legislative Affairs to the Director of Public and Congressional Affairs
NCUA 26 Special Assistant for Public Affairs to the Chairman, National Credit Union Administration

Section 213.3360 Consumer Product Safety Commission

CPSC 49 Special Assistant to a Commissioner
CPSC 50 Staff Assistant to a Commissioner
CPSC 61 Staff Assistant to a Commissioner
CPSC 62 Special Assistant to a Commissioner
CPSC 63 Special Assistant to a Commissioner
CPSC 64 Special Assistant (Legal) to a Commissioner

Section 213.3365 U.S. Chemical Safety and Hazard Investigation Board

CSHIB 1 Special Assistant to a Board Member

Section 213.3367 Federal Maritime Commission

FMC 41 Special Advisor to a Commissioner
FMC 42 Counsel to a Commissioner
FMC 45 Counsel to a Commissioner

Section 213.3373 United States Trade and Development Agency

TDA 3 Special Projects Officer to the Director, Trade and Development Agency

Section 213.3376 Appalachian Regional Commission

ARC 12 Senior Policy Advisor to the Federal Co-Chairman

Section 213.3377 Equal Employment Opportunity Commission

EEOC 4 Confidential Assistant to the Director, Office of Legal Counsel
EEOC 8 Confidential Assistant to the Chair
EEOC 29 Special Assistant (Speech Writer) to the Director, Office of Communications and Legislative Affairs
EEOC 32 Senior Advisor to a Commissioner
EEOC 39 Confidential Assistant to the Director, Office of Communications and Legislative Affairs

Section 213.3379 Commodity Futures Trading Commission

CFTC 1 Administrative Assistant to the Chairman
CFTC 3 Administrative Assistant to a Commissioner
CFTC 5 Administrative Assistant to a Commissioner
CFTC 12 Special Assistant to a Commissioner

Section 213.3382 National Endowment for the Arts

NEA 2 Special Assistant to the Chairman
NEA 77 Director of Communications to the Chairman

Section 213.3384 Department of Housing and Urban Development

HUD 2 Senior Counsel to the Deputy to the Chief of Staff for Policy and Programs
HUD 16 Staff Assistant to the Director of Executive Scheduling
HUD 33 Staff Assistant to the Assistant Secretary for Housing
HUD 36 Special Assistant to the Deputy Assistant Secretary for Congressional Relations

HUD 39 Staff Assistant to the Assistant Secretary for Community Planning and Development
HUD 42 Advance Coordinator to the Director, Executive Scheduling
HUD 45 Staff Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations
HUD 60 Staff Assistant to the Senior Advisor to the Deputy Secretary
HUD 61 Special Assistant to the Director, Center for Faith Based and Community Initiatives
HUD 65 Special Assistant to the Secretary of Housing and Urban Development
HUD 66 Special Assistant to the General Counsel
HUD 68 Special Assistant to the Assistant Secretary for Public Affairs
HUD 78 Advance Coordinator to the Director of Executive Scheduling
HUD 137 Staff Assistant to the Assistant Secretary for Administration
HUD 151 Staff Assistant to the Deputy Assistant Secretary for Public Affairs
HUD 173 Special Assistant to the Chief Financial Officer
HUD 174 Staff Assistant to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 177 Staff Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs
HUD 197 Legislative Officer to the Deputy Assistant Secretary for Legislation
HUD 200 Staff Assistant to the Director of Scheduling
HUD 216 Deputy Assistant Secretary for Special Needs to the Assistant Secretary for Community Planning and Development
HUD 224 Regional Director to the Assistant Deputy Secretary for Field Policy and Management
HUD 238 Special Assistant to the Deputy Secretary
HUD 249 Staff Assistant to the Assistant Deputy Secretary for Field Policy and Management
HUD 258 Principle Director of Executive Secretariat to the Assistant Secretary for Administration
HUD 259 Administrator of The Manufactured Housing Programs to the Assistant Secretary for Housing
HUD 263 Special Assistant to the Assistant Secretary for Public Affairs
HUD 268 Staff Assistant to the Director, Executive Scheduling
HUD 272 Deputy Assistant Secretary for Economic Affairs to the Assistant Secretary for Community Planning and Development
HUD 276 Staff Assistant to the Assistant Secretary for Housing
HUD 281 Special Projects Officer to the Regional Administrator, New York, New York
HUD 286 Staff Assistant to the Assistant Secretary for Public Affairs
HUD 361 Regional Director, Denver Colorado to the Assistant Deputy Secretary for Field Policy and Management
HUD 362 Staff Assistant to the Regional Director, Atlanta, Georgia
HUD 390 Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs
HUD 391 Special Assistant to the Regional Director, Philadelphia, Pennsylvania
HUD 405 Special Assistant to the Regional Director, Chicago, Illinois
HUD 418 Advance Coordinator to the Director of Executive Scheduling
HUD 419 Special Assistant (Speech Writer) to the Assistant Secretary for Public Affairs
HUD 427 Staff Assistant to the Assistant Secretary for Community Planning and Development
HUD 429 Staff Assistant to the Assistant Secretary for Public Affairs
HUD 430 Staff Assistant to the Assistant Secretary for Public and Indian Housing
HUD 431 Regional Director, Kansas City, Kansas to the Assistant Deputy Secretary for Field Policy and Management
HUD 449 Staff Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations
HUD 452 Deputy Director to the Director of Faith Based and Community Initiatives
HUD 462 Staff Assistant to the Assistant Secretary for Community Planning and Development
HUD 469 Special Assistant to the Chief Financial Officer
HUD 477 Special Assistant to the Assistant Secretary for Public and Indian Housing
HUD 516 General Deputy Assistant Secretary for Housing to the Assistant Secretary for Housing-Federal Housing Commissioner
HUD 526 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
HUD 543 Staff Assistant to the Director of Executive Scheduling
HUD 555 Staff Assistant to the Deputy Chief of Staff for Policy and Programs
HUD 556 Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity
HUD 558 Special Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations
HUD 571 Deputy Assistant Secretary for International Affairs to the Assistant Secretary for Policy Development and Research
HUD 603 Staff Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations

Section 213.3388 President's Commission on White House Fellowships

PCWHF 2 Associate Director to the Executive Director
PCWHF 3 Outreach Coordinator to the Executive Director
PCWHF 6 Education Director to the Executive Director

Section 213.3389 National Mediation Board

NMB 56 Confidential Assistant to the Chairman

Section 213.3391 Office of Personnel Management

OPM 1 Deputy Chief of Staff to the Chief of Staff
OPM 3 Special Assistant to the Director, Office of Communications
OPM 4 Special Assistant to the Director, Office of Congressional Relations
OPM 5 Special Assistant to the Director, Office of Congressional Relations
OPM 6 Special Assistant to the Chief of Staff
OPM 7 Special Assistant to the Director, Office of Congressional Relations
OPM 8 Special Assistant to the Director, Office of Communications
OPM 10 Special Initiatives Coordinator to the Director, Office of Communications
OPM 11 Deputy General Counsel to the General Counsel
OPM 13 Special Assistant to the Director, Office of Communications
OPM 14 Senior Advisor to the Chief of Staff
OPM 15 White House Liaison to the Chief of Staff
OPM 16 Special Assistant to the Deputy Director
OPM 17 Special Counselor to the General Counsel
OPM 18 Special Assistant to the Director, Office of Communications
OPM 20 Confidential Assistant/Scheduler to the Chief of Staff
OPM 21 Coordinator, Public Liaison and Constituent Services to the Director, Office of Communications
OPM 22 Deputy Director to the Director, Office of Communications

Section 213.3393 Pension Benefit Guaranty Corporation

PBGC 3 Assistant Executive Director for Legislative Affairs to the Executive Director, Pension Benefit Guaranty Corporation

Section 213.3394 Department of Transportation

DOT 1 Special Assistant to the Secretary
DOT 25 Special Assistant to the Under Secretary for Transportation Security
DOT 60 Deputy Assistant Secretary to the Assistant Secretary for Governmental Affairs
DOT 70 Special Assistant to the Assistant Secretary for Governmental Affairs
DOT 100 Chief, Consumer Information Division to the Administrator, National Highway Traffic Safety Administration
DOT 117 Assistant for Policy to the Secretary
DOT 128 Special Assistant to the Administrator, Federal Highway Administration
DOT 141 Special Assistant to the Chief of Staff
DOT 147 Special Assistant to the Assistant to the Secretary and Director of Public Affairs
DOT 151 Assistant for Policy to the Secretary
DOT 185 Special Assistant to the Assistant Secretary for Aviation and International Affairs
DOT 192 Special Assistant to the Assistant to the Secretary and Director of Public Affairs
DOT 194 Special Assistant to the Administrator, National Highway Traffic Safety Administration
DOT 198 Special Assistant to the Chief Counsel
DOT 217 Special Assistant to the Administrator, Research and Special Programs Administration
DOT 239 Director, Office of Congressional and Public Affairs to the Maritime Administrator
DOT 243 Speechwriter to the Assistant Director for Speechwriting
DOT 254 White House Liaison to the Chief of Staff
DOT 257 Deputy Director to the Assistant to the Secretary and Director of Public Affairs
DOT 258 Associate Director for Governmental Affairs to the Assistant Secretary for Governmental Affairs
DOT 259 Senior Advisor to the Administrator, the Maritime Administration
DOT 268 Speechwriter to the Assistant Director of Speechwriting
DOT 277 Staff Assistant to the Administrator, Federal Transit Authority
DOT 279 Associate Director for Speechwriting to the Assistant to the Secretary and Director of Public Affairs
DOT 285 Special Assistant to the Administrator, National Highway Traffic Safety Administration
DOT 287 Special Assistant to the Director of Scheduling and Advance
DOT 288 Associate Director to the Assistant Secretary for Government Affairs
DOT 291 Executive Assistant to the Assistant to the Secretary and Director of Public Affairs
DOT 292 Associate Director to the Deputy Assistant Secretary for Governmental Affairs
DOT 295 Executive Assistant to the Associate Deputy Secretary of Transportation
DOT 301 Associate Director to the Assistant Secretary for Governmental Affairs
DOT 311 Scheduling/Advance Assistant to the Director for Scheduling and Advance
DOT 313 Director, Office of Public and Consumer Affairs to the Administrator, National Highway Traffic Safety Administration
DOT 324 Director for Scheduling and Advance to the Chief of Staff
DOT 330 Staff Assistant to the Administrator, Federal Highway Administration
DOT 338 Special Assistant to the Director, Office of Policy, Federal Highway Administration
DOT 339 Director of Public Affairs to the Administrator, Research and Special Programs Administration
DOT 357 Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance
DOT 365 Special Assistant to the Assistant Secretary for Transportation Policy

Section 213.3395 Federal Emergency Management Agency

FEMA 2 Confidential Assistant to the Director
FEMA 4 Policy Advisor to the Division Director, Congressional and Intergovernmental Affairs
FEMA 5 Staff Assistant (Scheduling) to the Director
FEMA 6 Staff Assistant to the General Counsel
FEMA 7 Speech Writer to the Director, Public Affairs
FEMA 8 Deputy Chief of Staff/White House Liaison to the Director
FEMA 9 Special Assistant to the Chief Information Officer to the Assistant Director, Information Technology Services Directorate
FEMA 10 Legislative Branch Chief to the Director of Congressional and Intergovernmental Affairs Division
FEMA 11 Advisor for Media Affairs to the Director, Public Affairs
FEMA 12 Staff Assistant (Scheduling) to the Director
FEMA 14 Special Assistant to the Director, Human Resources Division
FEMA 16 Special Assistant to the Director for Administration/White House Liaison
FEMA 17 Assistant Division Director to the Director, Public Affairs Division
FEMA 19 Executive Assistant to the Assistant Director, Administration and Resource Planning
FEMA 20 Staff Assistant to the Assistant Director, Administration and Resource Planning

Section 213.3396 National Transportation Safety Board

NTSB 1 Senior Policy Advisor to the Chairman
NTSB 3 Special Counsel to the Chairman
NTSB 30 Director of Government and Industry Affairs to the Chairman
NTSB 31 Executive Assistant to the Chairman
NTSB 32 Special Assistant to a Board Member
NTSB 33 Director, Office of Communications to the Chairman
NTSB 34 Director, Office of Family Members to the Chairman
NTSB 102 Special Assistant to a Board Member

Section 213.3397 Federal Housing Finance Board

FHFB 1 Special Assistant to the Chairman
FHFB 5 Special Assistant to the Chairman

Senior Pay Level Positions (Above GS–15)

Section 213.3333 Federal Deposit Insurance Corporation

Chief of Staff to the Chairman
General Counsel to the Chairman
Deputy to the Chairman
Special Assistant to a Member of the Board

Section 213.3343 Farm Credit Administration

Executive Assistant to the Chairman
Executive Assistant to a Member
Executive Assistant to a Member
Director, Congressional and Public Affairs to the Chairman
Chief Operating Officer to the Chairman
Director, Office of Policy and Analysis to the Chief Operating Officer

Section 213.3357 National Credit Union Administration

Chief of Staff and Counsel to the Administrator
Director, Public and Congressional Affairs to the Administrator
Executive Assistant to a Member

Section 213.3382 National Endowment for the Arts

Executive Director, President's Committee on the Arts and Humanities to the Chairman

Section 213.3390 Export-Import Bank

Vice President, Office of Congressional and External Affairs to the President and Chairman

Vice President and Executive Assistant to the Chairman

Special Assistant and Coordinator of African Programs to the Chairman

General Counsel to the President and Chairman

Section 213.3393 Pension Benefit Guaranty Corporation

Executive Director to the Secretary of Labor

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–24217 Filed 9–25–02; 8:45 am]

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Federal Register

Thursday,
September 26, 2002

Part V

Securities and Exchange Commission

17 CFR Parts 239, 249, 274, and 275

Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies and Investment Advisors; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 249, and 274

[Release Nos. 33–8131, 34–46518, IC–25739; File No. S7–36–02]

RIN 3235–AI64

Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing amendments to its forms under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 to require registered management investment companies to provide disclosure about how they vote proxies relating to portfolio securities they hold. Under the proposed amendments, registered management investment companies would be required to disclose the policies and procedures that they use to determine how to vote proxies relating to portfolio securities. The proposals also would require registered management investment companies to file with the Commission and to make available to their shareholders the specific proxy votes that they cast in shareholder meetings of issuers of portfolio securities.

DATES: Comments must be received on or before December 6, 2002.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only.

Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–36–02; this file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Christian L. Broadbent, Attorney, Nicholas C. Milano, Jr., Senior Counsel, or Paul G. Cellupica, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is proposing for comment amendments to Forms N–1A [17 CFR 239.15A; 274.11A], N–2 [17 CFR 239.14; 274.11a–1], and N–3 [17 CFR 239.17a; 17 CFR 274.11b], the registration forms used by management investment companies to register under the Investment Company Act of 1940 (''Investment Company Act'') and to offer their securities under the Securities Act of 1933 (''Securities Act''), and amendments to proposed Form N–CSR [17 CFR 249.331; 17 CFR 274.128], a form that we recently proposed under the Securities Exchange Act of 1934 (''Exchange Act'') and the Investment Company Act to be used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002.[2]

Executive Summary

We are proposing form amendments that would do the following:

- Require a management investment company registered under the Investment Company Act of 1940 (''fund'') to disclose in its registration statement (and, in the case of a closed-end fund, Form N–CSR) the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities; and
- Require a fund to file with the Commission and make available to its shareholders, upon request and free of charge, the fund's proxy voting record. A fund would be required to disclose in its annual and semi-annual reports to shareholders and in its registration statement the methods by which shareholders may obtain information about proxy voting. A fund also would be required to disclose in its annual and semi-annual reports to shareholders information regarding any proxy votes that are inconsistent with its proxy voting policies and procedures.

In a companion release, we are also publishing proposed amendments that would require registered investment advisers to adopt and implement written policies and procedures reasonably designed to ensure that proxies are voted in the best interests of their clients, disclose to clients information about the advisers' proxy voting policies and procedures, disclose to clients how they may obtain information on how the adviser voted their proxies, and retain records relating to voting proxies on client securities.[3]

I. Introduction and Background

As of December 2001, mutual funds[4] held $3.4 trillion in U.S. corporate stock, representing approximately 19% of all publicly traded U.S. corporate equity.[5] This represents a dramatic increase from only 6.4% a decade earlier.[6] Millions of individual American investors, in turn, hold shares of equity mutual funds, relying on these funds —and the value of the corporate securities in which they invest—to fund their retirements, their childrens' educations, and their other basic financial needs.[7] Yet, despite the enormous influence of mutual funds in the capital markets and their huge impact on the financial fortunes of American investors, funds have been reluctant to disclose how they exercise their proxy voting power with respect to portfolio securities.[8] We believe that the

[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[2] *See* Investment Company Act Release No. 25723 (Aug. 30, 2002) [67 FR 57298 (Sept. 9, 2002)]; Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745 (2002).

[3] *See* Investment Advisers Act Release No. 2059 (Sept. 20, 2002).

[4] For simplicity, this Section of the release focuses on mutual funds (*i.e.*, open-end management investment companies). An open-end management investment company is an investment company, other than a unit investment trust or face-amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer. *See* Sections 4 and 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–4 and 80a–5(a)(1)]. Our proposed amendments, however, would apply to all registered management investment companies, except where noted. This includes both closed-end management investment companies and insurance company separate accounts organized as management investment companies that offer variable annuity contracts.

[5] Investment Company Institute, Mutual Fund Fact Book 62 (42nd ed. 2002); Securities Industry Association, Securities Industry Fact Book 71 (2002).

[6] Securities Industry Fact Book, *supra* note , at 71.

[7] Mutual Fund Fact Book, *supra* note , at 37. Approximately 93 million individual investors hold shares of mutual funds. *Id.* Shares of equity mutual funds are held through 164.8 million shareholder accounts. *Id.* at 63. A single individual may hold mutual fund shares through multiple accounts.

[8] *See* John Wasik, *Speak Loudly—Or Lose Your Big Stick,* The Financial Times, July 24, 2002, at 26 (only eight retail mutual fund groups that openly disclose how they vote on proxies). We have previously prepared reports commenting on the role of institutional investors in the corporate accountability process and their impact on portfolio companies. See Division of Corporation Finance, SEC, Staff Report on Corporate Accountability (Sept. 4, 1980) (printed for the use of Senate Comm. on Banking, Housing and Urban Affairs, 96th Cong., 2d Sess.) (hereinafter SEC, Staff Report on

time has come to consider increasing transparency of proxy voting by mutual funds. This increased transparency would enable fund shareholders to monitor their funds' involvement in the governance activities of portfolio companies, which could have a dramatic impact on shareholder value.[9]

Mutual funds are formed as corporations or business trusts under state law and, as in the case of other corporations and trusts, must be operated for the benefit of their shareholders.[10] Because a mutual fund is the beneficial owner of its portfolio securities, the fund's board of directors, acting on the fund's behalf, has the right and the obligation to vote proxies relating to the fund's portfolio securities. As a practical matter, however, the board generally delegates this function to the fund's investment adviser as part of the adviser's general management of fund assets, subject to the board's continuing oversight. The investment adviser to a mutual fund is a fiduciary that owes the fund a duty of ''utmost good faith, and full and fair disclosure.'' [11] This fiduciary duty extends to all functions undertaken on the fund's behalf, including the voting of proxies relating to the fund's portfolio securities. An investment adviser voting proxies on behalf of a fund, therefore, must do so in a manner consistent with the best interests of the fund and its shareholders.[12]

Traditionally, mutual funds have been viewed as largely passive investors, reluctant to challenge corporate management on issues such as corporate governance.[13] Funds have often followed the so-called ''Wall Street rule,'' according to which an investor should either vote as management recommends or, if dissatisfied with management, sell the stock.[14] In recent years, however, some funds, along with other institutional investors, have become more assertive in exercising their proxy voting responsibilities.[15] The increased assertiveness by mutual funds in the voting of proxies may have a number of causes. In some instances, funds have come to hold such large positions in a particular portfolio company that they cannot easily sell the company's stock if the company's management is performing poorly.[16] The investment policies of index funds generally do not permit them to sell poorly performing investments, and thus these funds may become active in corporate governance in order to maximize value for their shareholders.[17]

Recent corporate scandals have created renewed investor interest in issues of corporate governance and have underscored the need for mutual funds and other institutional investors to play a more active role in corporate governance.[18] The increased equity holdings and accompanying voting power of mutual funds place them in a position to have enormous influence on corporate accountability. As major shareholders, mutual funds may play a vital role in monitoring the stewardship of the companies in which they invest.

Moreover, in some situations the interests of a mutual fund's shareholders may conflict with those of its investment adviser with respect to proxy voting.[19] This may occur, for example, when a fund's adviser also manages or seeks to manage the retirement plan assets of a company whose securities are held by the fund.[20] In these situations, a fund's adviser may have an incentive to support management recommendations to further its business interests.

Yet, in spite of the substantial institutional voting power held by mutual funds, the increasing importance of the exercise of that power to fund shareholders, and the potential for conflicts of interest with respect to the exercise of fund proxy voting power, limited information is available regarding how funds vote their proxies. At present, the Commission's rules do not require mutual funds to disclose either their proxy voting policies and procedures or their proxy voting records.[21] Several mutual fund complexes voluntarily provide information to investors, often on their websites, about the policies and procedures that they use to determine

Corporate Accountability); SEC, Institutional Investor Study Report (Mar. 10, 1971) (printed for the use of House Comm. on Interstate and Foreign Commerce, 92nd Cong., 1st Sess.) (hereinafter SEC, Institutional Investor Study Report).

[9] We have received three rulemaking petitions urging that we adopt rules requiring funds to disclose both the policies and guidelines followed by the funds in determining how to vote on proxy proposals, and the record of actual proxy votes cast. *See* Rulemaking Petition by Domini Social Investments, LLC (Nov. 27, 2001); Rulemaking Petition by the International Brotherhood of Teamsters (Jan. 18, 2001); Rulemaking Petition by the American Federation of Labor and Congress of Industrial Organizations (July 30, 2002 and Dec. 20, 2000). The rulemaking petitions are available for inspection and copying in File No. 4–439 in the Commission's Public Reference Room.

[10] *See generally* James M. Storey & Thomas M. Clyde, Mutual Fund Law Handbook § 7.2 (1998); Allan S. Mostoff & Olivia P. Adler, *Organizing an Investment Company—Structural Considerations* § 2.4 *in* The Investment Company Regulation Deskbook (Amy L. Goodman ed., 1997).

[11] *SEC* v. *Capital Gains Research Bureau, Inc.,* 375 U.S. 180, 194 (1963) (interpreting Section 206 of the Investment Advisers Act of 1940). *Cf.* Section 36(b) of the Investment Company Act [15 U.S.C. 80a–35] (investment adviser of a fund has a fiduciary duty with respect to the receipt of compensation paid by the fund).

[12] *See* Investment Advisers Act Release No. 2059, *supra* note . *See also* SEC, Staff Report on Corporate Accountability, *supra* note , at 391 (fiduciary principle applies to all aspects of investment management, including voting). *Cf.* Dep't of Labor, Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974, 29 CFR 2509.94–2 (2002) (fiduciary act of managing employee benefit plan assets consisting of equity securities includes voting of proxies appurtenant to those securities).

[13] *See, e.g.*, SEC, Staff Report on Corporate Accountability, *supra* note 8, at 404 (investment managers have routinely supported management slates of director nominees); Alan R. Palmiter, *Mutual Fund Voting of Portfolio Shares: Why Not Disclose?*, 23 Cardozo L. Rev. 1419, 1430–31 (2002) (discussing mutual fund passivity in corporate governance). *See generally* John C. Coffee, Jr., *The SEC and The Institutional Investor: A Half-Time Report,* 15 Cardozo L. Rev. 837 (1994) (institutional investors have historically been passive investors); Bernard S. Black, *Shareholder Passivity Reexamined,* 89 Mich. L. Rev. 520 (1990) (shareholder voting has historically been passive).

[14] *See* SEC, Staff Report on Corporate Accountability, *supra* note 8, at 392 (describing ''Wall Street Rule'').

[15] *See, e.g.*, Aaron Lucchetti, *A Mutual-Fund Giant Is Stalking Excessive Pay,* Wall Street Journal, June 12, 2002, at C1 (Fidelity has voted against management recommendations involving stock-option plans); Kathleen Day, *Prodding For Disclosure of Funds' Proxy Votes,* Washington Post, Apr. 8, 2001, at H1 (Domini Social Equity Fund voted against management proposal to issue additional stock options for directors).

[16] *See* Palmiter, *supra* note 13, at 1435–1436 (as holdings have increased, mutual funds have realized that they cannot easily sell blocks of poorly performing stock).

[17] *See* Kathleen Pender, *The Influence of Indexing on the Markets,* San Francisco Chronicle, June 23, 2002, at G1 (some index funds are more likely to vote proxies because they generally cannot sell portfolio securities consistent with their investment policies).

[18] *See, e.g.*, Josh Friedman, *Vanguard to Turn More Activist in Proxy Voting,* Los Angeles Times, Aug. 22, 2002, at B3 (Vanguard imposing stricter corporate governance guidelines in light of recent events); Tom Hamburger, *Union Targets Corporate Change,* Wall Street Journal, July 30, 2002, at A2 (workers should use pension funds and votes to compel changes in corporate behavior); Beth Healy, *Big Investors Assuming a More Activist Stance,* Boston Globe, July 11, 2002, at C1 (big investors say they are taking a more activist stance after financial scandals at Enron, Global Crossing, and WorldCom); Russ Wiles, *Funds May Have More to Say on Governance,* Chicago Sun-Times, June 3, 2002, at F53 (investors taking a closer look at corporate governance issues as a result of Enron).

[19] *See, e.g.*, Aaron Bernstein & Geoffrey Smith, *Can You Trust Your Fund Company?,* BusinessWeek Online, Aug. 8, 2002 (AFL–CIO argues that conflicts of interest lead mutual funds to vote with management).

[20] For additional examples of potential conflicts of interest involving investment advisers, see Investment Advisers Act Release No. 2059, *supra* note 3, at Section I., ''Background.''

[21] In general, investment companies are organized either as business trusts in Delaware or Massachusetts, or as corporations in Maryland. The applicable state statutes do not specifically permit shareholders to inspect books and records relating to proxy voting by funds with respect to portfolio securities. *See* Del. Code Ann. tit. 12, § 3801–3824 (2001); Mass. Gen. Laws. Ann. ch. 182, § 1–14 (2002); Md. Code Ann., Corporations § 2–512 (2001).

how to vote proxies and, in some cases, their actual proxy voting decisions.[22] The Internet provides a medium for these funds to make information about their proxy voting available to shareholders quickly and in a cost-effective manner. We applaud these voluntary efforts of mutual funds to disclose proxy voting information to shareholders, and we encourage all funds to provide similar information without delay.

We believe, however, that the time has now arrived for the Commission to consider requiring mutual funds to disclose their proxy voting policies and procedures, and their actual voting records.[23] Proxy voting decisions by funds may play an important role in maximizing the value of the funds' investments, having an enormous impact on the financial livelihood of millions of Americans. Further, requiring greater transparency of proxy voting by funds may encourage funds to become more engaged in corporate governance of issuers held in their portfolios, which may benefit all investors and not just fund shareholders. Finally, shedding light on mutual fund proxy voting could illuminate potential conflicts of interest and discourage voting that is inconsistent with fund shareholders' best interests. Advances in technology over the last 30 years, specifically the Internet, allow this disclosure of proxy voting records to be readily accessible at low cost.

II. Discussion

We are proposing to amend the registration forms for funds, and recently proposed Form N–CSR, to require the disclosure of fund proxy voting policies and procedures as well as actual proxy votes cast.[24]

A. Disclosure of Policies and Procedures With Respect To Voting Proxies Relating to Portfolio Securities

We are proposing to require funds that invest in voting securities to disclose in their statements of additional information (''SAIs'') the policies and procedures that they use to determine how to vote proxies relating to securities held in their portfolios.[25] This would include the procedures that a fund uses when a vote presents a conflict between the interests of fund shareholders, on the one hand, and those of the fund's investment adviser, principal underwriter, or any affiliated person of the fund, its investment adviser, or principal underwriter, on the other. It also would include any policies and procedures of a fund's investment adviser, or any other third party, that the fund uses, or that are used on the fund's behalf, to determine how to vote proxies relating to portfolio securities.[26] For example, if a fund delegates proxy voting decisions to its investment adviser and the adviser uses its own policies and procedures to vote the fund's proxies, disclosure of the adviser's policies and procedures would be required.

For open-end management investment companies that continuously offer their shares and maintain an updated registration statement, the required SAI disclosure will result in continuous investor access, upon request, to current proxy voting policies and procedures. Because closed-end funds do not offer their shares continuously, and are therefore generally not required to maintain an updated SAI to meet their obligations under the Securities Act of 1933,[27] we are also proposing to require closed-end funds to disclose their proxy voting policies and procedures annually on Form N–CSR.[28]

We would expect that funds' disclosure of their policies and procedures would include general policies and procedures, as well as policies with respect to voting on specific types of issues. The following are examples of general policies and procedures that some funds include in their proxy voting policies and procedures and with respect to which disclosure would be appropriate:

- The extent to which the fund delegates its proxy voting decisions to its investment adviser or another third party, or relies on the recommendations of a third party;
- Policies and procedures relating to matters that may affect substantially the rights or privileges of the holders of securities to be voted; and
- Policies regarding the extent to which the fund will support or give weight to the views of management of the company.

The following are examples of specific types of issues that are covered by some funds' proxy voting policies and procedures and with respect to which disclosure would be appropriate:

- Corporate governance matters, including changes in the state of incorporation, mergers and other

[22] *See* Calvert Group, Ltd. <*www.calvertgroup.com*> (visited July 25, 2002) (proxy voting policies and votes cast); Domini Social Investments LLC <*www.domini.com*> (visited July 25, 2002) (proxy voting policies and votes cast); Fidelity Management & Research Company <*www.fidelity.com* > (visited Sept. 4, 2002) (proxy voting policies); PAX World Management Corporation <*www.paxfund.com*> (visited July 25, 2002) (proxy voting policies and votes cast); Teachers Insurance and Annuity Association of America-College Retirement and Equities Fund <*www.tiaa-cref.org*> (visited Sept. 8, 2002) (proxy voting policies); The Vanguard Group <*www.vanguard.com*> (visited Sept. 5, 2002) (proxy voting policies).

[23] Twice in the past we have considered requiring funds to provide information about proxy voting with respect to portfolio securities. *See* Notice of Proposal to Amend Forms N–8B–1, N–8B–3, N–8B–4, N–5, and N–1Q To Require Registered Investment Companies To Disclose with Greater Specificity Their Policies on Involvement In the Affairs of Their Portfolio Companies, Investment Company Act Release No. 6853 (Dec. 1, 1971) [36 FR 25434 (Dec. 31, 1971)] (proposed amendments would have required registered investment companies to disclose their policies and procedures for considering proxy materials of portfolio companies); Notice of Withdrawal of Proposal to Amend Forms N–8B–1, N–8B–3, N–8B–4, N–5, and N–1Q To Require Registered Investment Companies To Disclose with Greater Specificity Their Policies on Involvement In the Affairs of Their Portfolio Companies, Investment Company Act Release No. 9295 (May 20, 1976) [41 FR 21796 (May 28, 1976)]; Proposed Rules Relating to Shareholder Communications, Shareholder Participation in the Corporate Electoral Process and Corporate Governance Generally, Securities Exchange Act Release No. 14970 (July 18, 1978) [43 FR 31945 (July 24, 1978)] (proposed rules would have required registered investment companies and other institutional investors to disclose their proxy voting policies and procedures for equity securities held for their own account or the account of others, and the number of times they voted for or against management or abstained from voting on any contested matter); Proposed Rules Relating to Shareholder Communications, Shareholder Participation in the Corporate Electoral Process and Corporate Governance Generally, Withdrawal of Proposed Rule and Amendments, Securities Exchange Act Release No. 15385 (Dec. 6, 1978) [43 FR 58533 (Dec. 14, 1978)]. In 2000, we proposed amendments to Form ADV, the registration form for investment advisers, that would require registered investment advisers to disclose their proxy voting practices. *See* Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV, Investment Advisers Act Release No. 1862 (Apr. 5, 2000) [65 FR 20524 (Apr. 17, 2000)]. These amendments remain pending.

[24] Form N–1A [17 CFR 239.15A; 17 CFR 274.11A] is the registration form for open-end management investment companies. Form N–2 [17 CFR 239.14; 17 CFR 11a–1] is the registration form for closed-end management investment companies. Form N–3 [17 CFR 239.17a; 17 CFR 274.11b] is the registration form for separate accounts organized as management investment companies that offer variable annuity contracts.

[25] The SAI is part of a fund's registration statement and contains information about a fund in addition to that contained in the prospectus. The SAI is required to be delivered to investors upon request and is available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'').

[26] Proposed Item 13(f) of Form N–1A; Proposed Item 18.16 of Form N–2; Proposed Item 20(o) of Form N–3. *See* Section 2(a)(3) of the Investment Company Act [15 U.S.C. 80a–2(a)(3)] (defining affiliated person).

[27] Pursuant to rule 8b–16(b) under the Investment Company Act [17 CFR 270.8b–16(b)], closed-end funds are not required to file amendments to their registration statements (including their SAIs) in order to comply with their Investment Company Act registration obligations, provided that they include specified information in their annual reports to shareholders.

[28] Item 3 of proposed Form N–CSR.

corporate restructurings, and anti-takeover provisions such as staggered boards, poison pills, and supermajority provisions;

• Changes to capital structure, including increases and decreases of capital and preferred stock issuance;

• Stock option plans and other management compensation issues; and

• Social and corporate responsibility issues.

We also are proposing to require that a fund disclose in its shareholder reports that a description of the fund's proxy voting policies and procedures is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the fund's website, if applicable; and (iii) on the Commission's Web site at *http://www.sec.gov.*[29] The proposals also would require a fund to send this description of the fund's proxy voting policies and procedures within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.[30]

We request comment generally on the disclosure of policies and procedures that funds use to determine how to vote proxies relating to securities held in their portfolios and specifically on the following issues.

• Should we require funds to disclose their policies and procedures with respect to voting proxies of portfolio securities?

• Should we provide greater specificity with regard to the disclosure that funds are required to make? For example, should our forms expressly require disclosure of any or all of the specific matters enumerated above or of any other specific matters?

• Is the SAI (and, for closed-end funds, Form N–CSR) the appropriate location for funds to disclose their policies and procedures with respect to voting proxies relating to portfolio securities? Will our proposals provide adequate access to fund proxy voting policies and procedures by fund shareholders and prospective investors? Should the disclosure be included in a document that is delivered to every shareholder?

B. Disclosure of Proxy Voting Record

We also are proposing to require each fund to file with the Commission its proxy voting record and make this record available to its shareholders. In addition, a fund would be required to disclose in its annual and semi-annual reports to shareholders information regarding any proxy votes that are inconsistent with its proxy voting policies and procedures.

Disclosure of Complete Proxy Voting Record

The Commission is proposing to require a fund to file its complete proxy voting record as part of its report on proposed Form N–CSR. Today's proposals would add a new item to proposed Form N–CSR, which would require a fund to disclose the following information for each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report and with respect to which the fund was entitled to vote:

• The name of the issuer of the portfolio security;

• The exchange ticker symbol of the portfolio security;

• The Council on Uniform Securities Identification Procedures (''CUSIP'') number for the portfolio security;

• The shareholder meeting date;

• A brief identification of the matter voted on;

• Whether the matter was proposed by the issuer or by a security holder;

• Whether the fund cast its vote on the matter;

• How the fund cast its vote (*e.g.*, for or against proposal, or abstain; for or withhold regarding election of directors); and

• Whether the fund cast its vote for or against management.[31]

A fund also would be required to make its proxy voting record available to its shareholders. Specifically, the proposals would require a fund to disclose in its SAI, as well as annual and semi-annual reports to shareholders, that the fund's proxy voting record is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number, (ii) on the fund's Web site, if applicable, and (iii) on the Commission's Web site.[32] The proposals also would require a fund, upon receipt of a request for its proxy voting record, to send the information disclosed in response to Item 2 of the Fund's most recently filed Form N–CSR.[33] Funds would be required to send this information within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.[34]

Our proposals would require that a fund's proxy voting policies and procedures and proxy voting record be publicly available through filings with us. They also would require that this information be readily available to fund shareholders, without charge, and that shareholders be apprised of how this information may be obtained. We believe that these proposals strike an appropriate balance—ensuring that a description of a fund's proxy voting policies and procedures, as well as its proxy voting record, are readily available to interested fund shareholders without imposing on funds, and their shareholders, unnecessary costs that would be associated with the distribution of this information to every shareholder of a fund.[35]

We considered whether to provide funds greater flexibility in determining the medium through which to make their proxy voting information available to their shareholders, so that a fund could, for example, meet this obligation exclusively through website access. We concluded that, at this time, requiring funds to make the information available to investors who call a toll-free (or collect) telephone number would ensure the most widespread access to this information by all investors. While the percentage of households with Internet access has increased considerably in recent years, it remains substantially lower than the percentage with access to telephones.[36]

We note, however, that we have taken steps to encourage issuers and market intermediaries to communicate with and deliver information to investors

[29] *See* Proposed Item 22(b)(7) and 22(c)(5) of Form N–1A; Proposed Instructions 4.g. & 5.e. to Item 23 of Form N–2; Proposed Instructions 4(vii) & 5(v) to Item 27(a) of Form N–3.

[30] Proposed Instructions to Items 22(b)(7) and 22(c)(5) of Form N–1A; Proposed Instruction 6 to Item 23 of Form N–2; Proposed Instruction 6 to Item 27(a) of Form N–3.

[31] Item 2 of proposed Form N–CSR.

[32] *See* Proposed Items 13(f) and 22(b)(7) & (c)(5) of Form N–1A; Proposed Item 18.16 and Proposed Instructions 4.g. and 5.e. to Item 23 of Form N–2; Proposed Item 20(o) and Proposed Instructions 4(vii) and 5(v) to Item 27(a) of Form N–3.

[33] Proposed Instructions to Items 13(f), 22(b)(7), and 22(c)(5) of Form N–1A; Proposed Instruction to Item 18.16 and proposed Instruction 6 to Item 23 of Form N–2; Proposed Instruction to Item 20(o) and proposed Instruction 6 to Item 27(a) of Form N–3.

[34] Id.

[35] *Cf.* Rulemaking Petition by Domini Social Investments, LLC (Nov. 27, 2001); Rulemaking Petition by the International Brotherhood of Teamsters (Jan. 18, 2001); Rulemaking Petition by the American Federation of Labor and Congress of Industrial Organizations (July 30, 2002, and Dec. 20, 2000) (requesting that the Commission require funds to provide their proxy voting information on the Internet and make paper copies available upon request).

[36] *See* Economics and Statistics Administration & National Telecommunications and Information Administration, A Nation Online: How Americans Are Expanding Their Use of the Internet, at 3 (Feb. 2002) (50.5% of households had Internet access as of Sept. 2001); Federal Communications Commission, Telephone Subscribership In the United States, at 1 (Feb. 2002) (95.1% of households had telephone service as of July 2001).

through the Internet.[37] The increased availability of information through the Internet has helped to promote transparency, liquidity, and efficiency by making information available to investors quickly and in a cost-effective manner. We encourage each fund to make its proxy voting information available to its shareholders on its website, if it has one.

We request comment generally on the proposed disclosure of a fund's proxy voting record and specifically on the following issues.

- What would be the costs of requiring funds to file with the Commission their proxy voting records on Form N–CSR, and to make these records available to their shareholders? Are there less costly alternative means of requiring funds to disclose their proxy voting records?
- What would be the benefits to fund shareholders and others of having funds' proxy voting records disclosed?
- Is Form N–CSR the appropriate location for the disclosure of a fund's proxy voting record? We have proposed, but not yet adopted, Form N–CSR. If we ultimately do not adopt Form N–CSR to implement the certification requirement of Section 302 of the Sarbanes-Oxley Act of 2002, should we nevertheless adopt Form N–CSR as a medium for a fund to disclose its proxy voting record? If not, how should a fund file its proxy voting record with the Commission? Should the information simply be filed together with the reports to shareholders currently required to be filed with the Commission pursuant to rule 30b2–1 under the Investment Company Act?[38]
- Is it sufficient to require that a fund's proxy voting record be made available to investors or should we require a fund to deliver its proxy voting record to each investor? For example, should a fund's complete proxy voting record be included in its reports to shareholders?
- Should a fund be permitted to meet its obligation to disclose its proxy voting record exclusively through posting the required information on its website?
- The proposal would require funds to disclose their proxy voting records semi-annually. Will this provide sufficiently frequent disclosure to investors? Should we require funds to disclose their proxy voting records more frequently? If so, through what means? Would less frequent disclosure, *e.g.*, annually, be sufficient?
- Are we proposing to require too much or too little information to be disclosed in proposed Form N–CSR? For example, should we limit the disclosure to contested matters, not require disclosure with respect to any categories of ''routine'' matters, or otherwise limit the types of matters with respect to which disclosure is required? Could funds generically disclose their votes on any categories of matters, *e.g.*, votes with management (or votes as recommended by an independent third-party proxy voting service) on certain categories of issues? Would this type of summary disclosure provide investors with adequate information? Should we require additional information, *e.g.*, information about how other funds in the fund complex have voted?
- Our proposed requirements to disclose proxy voting policies and procedures and proxy voting records would only apply to registered management investment companies. Should the proposed disclosure requirements also extend to unit investment trusts (''UITs'')?[39] If so, how should they apply? UITs do not include SAIs in their registration statements.[40] In addition, UITs do not transmit reports to shareholders.[41] Likewise, we have not proposed that UITs file proposed Form N–CSR. If the proxy voting disclosure requirements were to extend to UITs, where, and how frequently, should they make the required disclosure of their proxy voting policies and procedures and proxy voting records (*e.g.*, prospectus, annual report on Form N–SAR, a newly created form, sponsor's website)? How would UITs alert investors to the availability of the information since they do not file SAIs, or transmit reports to shareholders? Should UITs only be required to disclose proxy voting information annually because, unlike management investment companies, they are not currently subject to semi-annual reporting requirements? Are there any other modifications to the proposed disclosure requirements that would be appropriate in the case of UITs? If we extend the proposed proxy voting requirements to UITs, should we exempt UITs that invest exclusively in mutual funds, such as UITs that offer variable annuities and variable life insurance, since the underlying mutual funds would be covered?

Disclosure of Proxy Votes That Are Inconsistent With Fund's Policies and Procedures

We also are proposing to require a fund to disclose in its annual and semi-annual reports to shareholders proxy votes (or failures to vote) that are inconsistent with the fund's proxy voting policies and procedures.[42] The information that would be required would include the same information required by proposed Form N–CSR with respect to disclosure of the fund's complete proxy voting record.[43] In addition, the fund would be required to disclose the reasons why the fund voted, or failed to vote, in a manner inconsistent with its proxy voting policies and procedures.[44]

We believe that when a fund votes the proxies of its portfolio securities in a manner inconsistent with the fund's stated policies and procedures, a heightened risk exists that a conflict of interest may be present. Therefore, in these instances, it is appropriate that funds include information about the vote in reports that are delivered to all shareholders. We believe that this will provide shareholders with the best opportunity to evaluate the propriety of the proxy voting decision and will serve as a strong deterrent to voting decisions that are not in the best interests of shareholders.

We request comment generally on the disclosure of proxy votes that are inconsistent with a fund's policies and procedures and specifically on the following issues.

- Should we require disclosure in reports to shareholders of proxy votes

[37] *See, e.g.*, Acceleration of Periodic Report Filing Dates and Disclosure Concerning Website Access to Reports, Securities Act Release No. 8128 (Sept. 5, 2002) [67 FR 58479 (Sept. 16, 2002)] (requiring companies to include disclosure in their annual reports on Form 10–K about availability on company websites of reports on Forms 10–K, 10–Q, and 8–K).

[38] 17 CFR 270.30b2–1.

[39] A unit investment trust is ''an investment company which (A) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities; but does not include a voting trust.'' Section 4(2) of the Investment Company Act [15 U.S.C. 80a–4(2)].

[40] Currently, UITs register under the Investment Company Act on Form N–8B–2 [17 CFR 274.12] and register their securities under the Securities Act of 1933 on Form S–6 [17 CFR 239.16].

[41] *Cf.* Rule 30e–2 under the Investment Company Act [17 CFR 270.30e–2] (requiring registered unit investment trusts substantially all of the assets of which consist of securities issued by a management investment company to transmit to their shareholders semi-annually a report containing all of the applicable information and financial statements or their equivalent required to be included in reports of the management investment company for the same fiscal period).

[42] *See* Proposed Items 22(b)(8) & (c)(6) of Form N–1A; Proposed Instructions 4.h. & 5.f. to Item 23 of Form N–2; Proposed Instructions 4(viii) & 5(vi) to Item 27(a) of Form N–3.

[43] *See* Item 2 of proposed Form N–CSR. *See also* discussion supra Section II.B., ''Disclosure of Complete Proxy Voting Record.''

[44] *See* Proposed Items 22(b)(8)(x) & (c)(6)(x) of Form N–1A; Proposed Instructions 4.h.(10) & 5.f.(10) to Item 23 of Form N–2; Proposed Instructions 4(viii)(J) & 5(vi)(J) to Item 27(a) of Form N–3.

that are inconsistent with a fund's proxy voting policies and procedures? Is it necessary or appropriate to require delivery (as opposed to availability) of this information to all shareholders?

• Should information about any other aspects of a fund's actual proxy voting record be required to be included in reports to shareholders? For example, should a fund be required to include in its reports to shareholders its votes on contested matters, management compensation issues, director elections, or any other matters?

III. General Request for Comments

The Commission requests comment on the amendments proposed in this release, whether any further changes to our rules or forms are necessary or appropriate to implement the objectives of our proposed amendments, and on other matters that might have an effect on the proposals contained in this release.

IV. Paperwork Reduction Act

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501, *et seq.*], and the Commission is submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: (1) ''Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies'; (2) ''Form N–2—Registration Statement of Closed-End Management Investment Companies''; (3) ''Form N–3—Registration Statement of Separate Accounts Organized as Management Investment Companies''; and (4) ''Form N–CSR—Certified Shareholder Report of Registered Management Investment Companies.'' 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.

Form N–1A (OMB Control No. 3235–0307), Form N–2 (OMB Control No. 3235–0026), and Form N–3 (OMB Control No. 3235–0316) were adopted pursuant to Section 8(a) of the Investment Company Act [15 U.S.C. 80a–8] and Section 5 of the Securities Act [15 U.S.C. 77e]. We issued a release proposing Form N–CSR on August 30, 2002, pursuant to Section 8(a) of the Investment Company Act [15 U.S.C. 80a–8] and Section 13 of the Securities Exchange Act [15 U.S.C. 78m].

We are proposing amendments to require funds holding equity securities to disclose the policies and procedures that they use to determine how to vote the proxies of their portfolio securities. We are also proposing to require disclosure of the actual voting record with respect to such proxies. We believe that the changes we propose today will enhance the transparency of fund proxy voting and will allow shareholders to monitor whether funds are voting portfolio securities in the best interests of shareholders.

Form N–1A

Form N–1A, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are open-end funds registering with the Commission on Form N–1A. Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements are not confidential.

The current hour burden for preparing an initial Form N–1A filing is 801 hours per portfolio. The current annual hour burden for preparing post-effective amendments of Form N–1A is 99 hours per portfolio. The Commission estimates that, on an annual basis, 193 portfolios file initial registration statements on Form N–1A and 7,525 file post-effective amendments on Form N–1A. Thus, the current total annual hour burden for the preparation and filing of Form N–1A is 899,568 hours.

We estimate that the proposed amendments would increase the hour burden per portfolio per filing of an initial registration statement by 8 hours and would increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement by 2 hours. Thus, if the proposed amendments to Form N–1A are adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–1A would be 916,162 hours.

Form N–2

Form N–2, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are closed-end funds registering with the Commission on Form N–2. Compliance with the disclosure requirements of Form N–2 is mandatory. Responses to the disclosure requirements are not confidential.

The current hour burden for preparing an initial Form N–2 filing is 536.7 burden hours per filing, and the current annual hour burden for preparing post-effective amendments of Form N–2 is 101.7 hours per filing. The Commission currently estimates that, on an annual basis, 140 respondents file an initial registration statement on Form N–2 and 38 file post-effective amendments on Form N–2. Thus, the current total annual hour burden for the preparation and filing of Form N–2 is 79,003 hours.

We estimate that the proposed amendments would increase the hour burden per filing of an initial registration statement by 8 hours and would increase the hour burden per filing of a post-effective amendment to a registration statement by 2 hours. Thus, if the proposed amendments to Form N–2 are adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments on Form N–2 would be 80,198.6 hours.

Form N–3

Form N–3, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are separate accounts, organized as management investment companies and offering variable annuities, registering with the Commission on Form N–3. Compliance with the disclosure requirements of Form N–3 is mandatory. Responses to the disclosure requirements are not confidential.

The current annual hour burden for preparing an initial registration statement on a Form N–3 is 907.2 hours per portfolio. The current annual hour burden for preparing post-effective amendments of Form N–3 is 148.4 hours per portfolio. The Commission estimates that, on an annual basis, no initial registration statements will be filed on Form N–3 and 60 post-effective amendments will be filed on Form N–3. The estimated average number of portfolios per filing is 4, bringing the estimated total number of portfolios in post-effective amendments to Form N–3 filings annually to 240. Thus, the current total burden hours for the preparation and filing of Form N–3 is 35,616 hours.

We estimate that the proposed amendments would increase the hour burden per portfolio of an initial registration statement by 8 hours and would increase the hour burden per portfolio of a post-effective amendment to a registration statement by 2 hours. Thus, if the proposed amendments to Form N–3 are adopted, the total annual hour burden for all funds for preparation and filing of initial

registration statements and post-effective amendments on Form N–3 would be 36,096 hours.

Form N–CSR

Proposed Form N–CSR, including the proposed amendments, contains collection of information requirements. The respondents to this information collection would be management investment companies subject to rule 30e–1 under the Investment Company Act of 1940 registering with the Commission on Forms N–1A, N–2, or N–3. Compliance with the disclosure requirements of Form N–CSR is proposed to be mandatory. Responses to the disclosure requirements are not confidential.

We previously estimated that the hour burden for preparing a proposed Form N—CSR would be 5 hours per filing. We also estimated that 3,700 registered investment companies would file Form N–CSR on a semi-annual basis for a total of 7,400 filings. Thus, we estimated that the total annual hour burden for the preparation and filing of Form N–CSR would be 37,000 hours.[45]

We estimate that the proposed amendments would increase the hour burden per filing of a Form N–CSR by 10 hours. Thus, if the proposed amendments to Form N–CSR are adopted, the total annual hour burden for all funds for preparation and filing of Form N–CSR would be 111,000 hours.[46]

Shareholder Reports

Rule 30e–1, including the proposed amendments to Forms N–1A, N–2, and N–3, contains collection of information requirements.[47] Compliance with the disclosure requirements of rule 30e–1 is mandatory. Responses to the disclosure requirements will not be kept confidential.

There are approximately 3,700 management investment companies subject to rule 30e–1. We estimate that the current hour burden for preparing and filing semi-annual and annual shareholder reports in compliance with rule 30e–1 is 202.5 hours. We estimate that the proposed amendments would increase the hour burden of complying with rule 30e–1 by 10 hours. Thus, if the proposed amendments are adopted, the total hour burden of complying with rule 30e–1 would be 212.5 hours, for a total annual burden to the industry of 786,250 hours.

Request for Comments

We request your comments on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609, with reference to File No. S7–36–02. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release.

V. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. We propose to require funds to provide disclosure about how they vote proxies of the portfolio securities they hold. Funds would be required to disclose in their registration statements their policies and procedures used to determine how to vote proxies relating to portfolio securities, and to include disclosure about the availability of the fund's proxy voting record. This disclosure would be included in the statement of additional information (''SAI''), which is not part of the fund's prospectus but is delivered to investors free of charge upon request. We are also proposing to require a fund to file with the Commission semi-annually, as part of its reports on proposed Form N–CSR, its complete proxy voting record for the period covered by the report. Our proposals would also require a fund to include in its annual and semi-annual reports to shareholders disclosure that this record, and the fund's proxy voting policies and procedures, are available (i) without charge, upon request from the fund, (ii) on the fund's website, if applicable, and (iii) on the SEC website. Finally, our proposals would require disclosure in shareholder reports of any proxy votes that are inconsistent with the fund's policies and procedures.

A. Benefits

The proposed form amendments will benefit fund investors, by providing them with access to information about how funds vote their proxies. To the extent that investors would choose among funds based on their proxy voting policies and records, in addition to other factors such as expenses and investment policies, investors will be better able to select funds that suit their particular preferences.

In some situations the interests of a mutual fund's shareholders may conflict with those of its investment adviser with respect to proxy voting. This may occur, for example, when a fund's adviser also manages or seeks to manage the retirement plan assets of a company whose securities are held by the fund. In these situations, a fund's adviser may have an incentive to support management recommendations to further its business interests. Our proposals would require funds to disclose how they address such conflicts of interest in determining how to vote their proxies, and would also require funds to identify any proxy votes that are inconsistent with their stated voting policies. This disclosure requirement should benefit fund shareholders by deterring voting decisions that are motivated by considerations of the interests of the fund's adviser rather than the interests of fund shareholders.

Moreover, the proposed rules could increase funds' focus on corporate governance. This could result in better decisionmaking in particular corporate governance matters, which may enhance shareholder value of the issuers of portfolio securities, and may, in turn, benefit both investors in the fund and other investors in these issuers. These benefits are difficult to quantify. We note that assets held in equity funds account for approximately 19% of the market capitalization of all publicly

[45] *See* Investment Company Act Release No. 25723 (Aug. 30, 2002) [67 FR 57298 (Sept. 9, 2002)].

[46] This increase in hour burden includes that imposed by Item 3 of proposed Form N–CSR with respect to policies and procedures used by a closed-end fund in determining how to vote proxies relating to portfolio securities.

[47] The proposed amendments are to Forms N–1A, N–2, and N–3. Rule 30e–1(a) under the Investment Company Act of 1940 [17 CFR 270.30e–1(a)] requires funds to include in the shareholder reports the information that is required by the fund's registration statement form.

traded U.S. corporate equity.[48] We request comment on the extent and magnitude of the effect that requiring disclosure of proxy voting guidelines and decisions by funds would have on corporate governance, and on the U.S. economy generally.

B. Costs

The proposed amendments would lead to some additional costs for funds, which may be passed on to fund shareholders.

Our proposals would require new disclosure by a fund regarding its proxy voting policies and records, in its SAI and its annual and semi-annual reports to shareholders. These costs would include both internal costs (for attorneys and other non-legal staff of a fund, such as computer programmers, to prepare and review the required disclosure) and external costs (for printing and typesetting of the disclosure).[49] First, our proposals would require disclosure of the fund's proxy voting policies and procedures, and disclosure about the availability of its proxy voting record, in the fund's SAI. Because the SAI is typically not typeset and is only provided to shareholders upon request, we estimate that the external costs per investment company of this additional disclosure in the SAI would be minimal. For purposes of the Paperwork Reduction Act, we have estimated that the disclosure requirements would add 18,270 hours to the burden of completing Forms N–1A, N–2 and N–3.[50] We estimate that this additional burden would equal total internal costs of $1,259,534 annually, or $340 per investment company.[51]

Second, with respect to annual and semi-annual reports to shareholders, funds would be required to include disclosure about the availability of information regarding the fund's proxy voting policies and procedures, and proxy voting record, and to disclose any proxy votes that were inconsistent with the fund's proxy voting policies and procedures. We estimate that to comply with these disclosure requirements, a typical fund would need to include at most one additional page in its annual and semi-annual reports to shareholders, at a typesetting cost of $55 per page and a printing cost of $0.025 per page.[52] We estimate that a typical fund may have, on average, 30,000 shareholder accounts;[53] therefore, the additional disclosure in shareholder reports would cost approximately $1610 (($0.025 × 30,000 shareholder accounts, plus $55) × 2 reports per year) in external costs per fund. Based on the Commission's estimate of 3700 registered management investment companies, we estimate these external costs would be $5,957,000 for the industry as a whole. In addition, we estimate that these disclosure requirements would add 37,000 burden hours for management investment companies required to transmit shareholder reports, or 10 hours per fund, equal to internal costs of $2,550,780 for the industry annually, or $689 per investment company.[54]

Third, our proposals also would require funds to file with the Commission information regarding each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report on proposed Form N–CSR, and to make available to their shareholders the information contained in proposed Form N–CSR. We estimate that the external costs per investment company of this additional disclosure would be minimal. In addition, we estimate that these disclosure requirements would add 74,000 burden hours to Form N–CSR, or 20 hours per management investment company filing on Form N–CSR annually. We estimate that this burden would be $5,101,560 in total internal costs annually, or $1,379 per investment company.[55]

Therefore, based on this analysis, we estimate that the total external and internal costs of the additional disclosure that would be required by the proposed amendments would be $14,868,874. We request comment on the nature and magnitude of our estimates of the costs of the additional disclosure that would be required if our proposals were adopted.

Because the proposed amendments may have the effect of inducing fund advisers and fund boards to devote more resources to articulating their proxy voting policies and procedures in more detail, and to monitoring proxy voting decisions, they may result in higher expenses and advisory fees for funds. Some of these expenses may be passed on to shareholders. We request comment on the extent to which the proposed amendments would increase costs to funds and their shareholders as well as affect shareholder value.

C. Request for Comments

We request comments on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Consideration of Burden on Competition; Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) also prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[56] In addition, section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[57]

[48] *See* Securities Industry Fact Book, *supra* note 5, at 71.

[49] Based on the Division's review of materials submitted by various mutual fund complexes, we believe that most registered management investment companies currently maintain policies and procedures used to determine how to vote proxies relating to portfolio securities.

[50] This would represent 16,594 additional hours for Form N–1A, 1,196 additional hours for Form N–2, and 480 additional hours for Form N–3.

[51] These figures are based on a Commission estimate that approximately 3,700 management investment companies would be subject to the proposed amendments and an estimated hourly wage rate of $68.94. The estimate of the number of investment companies is based on data derived from the Commission's EDGAR filing system. The estimated wage rate figure is based on published hourly wage rates for compliance attorneys in New York City ($74.22) and programmers ($27.91), and the estimate, based on the Commission staff's discussions with certain fund complexes, that attorneys and programmers would divide time equally on compliance with the proxy voting disclosure requirements, yielding a weighted wage rate of $51.065 (($74.22 × .50) + (27.91 × .50)) = $51.065). *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2001* (Oct. 2001). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of $68.94 (51.065 × 1.35) = $68.94.

[52] This estimate is based on information provided to the Division of Investment Management by registered investment companies regarding printing and typesetting costs for prospectuses and SAIs.

[53] This estimate regarding the average number of shareholder accounts per typical fund is derived from data provided in the Mutual Fund Fact Book, *supra* note 5, at 63, 64.

[54] These figures are based on a Commission estimate that approximately 3,700 investment companies would be subject to the proposed amendments and an estimated hourly wage rate of $68.94. *See supra* note.

[55] *Id.*

[56] 15 U.S.C. 78w(a)(2).

[57] 15 U.S.C. 77(b), 78c(f), and 80a–2(c).

The proposed amendments are intended to provide greater transparency for fund shareholders regarding the management of their investments in funds. The changes may improve efficiency. The enhanced disclosure requirements would provide shareholders with greater access to proxy voting policies and decisions of the funds in which they invest, which would promote more efficient allocation of investments by investors and more efficient allocation of assets among competing funds. The proposed amendments may also improve competition, as enhanced disclosure may prompt funds to seek to provide better-informed investors with improved products and services. Finally, the effects of the proposed amendments on capital formation are unclear. Although, as noted above, we believe that the proposed amendments would benefit investors, the magnitude of the effect of the proposed amendments on efficiency, competition, and capital formation is difficult to quantify, particularly given that most funds do not currently provide the type of disclosure contemplated by the proposed amendments.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. We also request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''Analysis'') has been prepared in accordance with 5 U.S.C. 603, and relates to the Commission's proposed form amendments under the Securities Act, the Exchange Act, and the Investment Company Act to require funds to provide disclosure about how they vote proxies of portfolio securities they hold. Under the proposed amendments, funds would be required to disclose in their registration statements the policies and procedures that they use to determine how to vote the proxies of portfolio securities. The proposal also would require funds to file with the Commission and to make available to their shareholders, upon request and without charge, a document containing the information required by proposed Form N–CSR.

Specifically, a fund would be required to disclose in its statement of additional information (''SAI'') its policies and procedures used to determine how to vote proxies of the securities held in its portfolio, and to provide disclosure regarding the availability of its proxy voting record to shareholders. The proposals also would require a fund to file with the Commission, as part of its reports on proposed Form N–CSR, its complete proxy voting record for the period covered by the report. Finally, the proposals also would require a fund to include in its annual and semi-annual reports to shareholders disclosure that this record, and the fund's proxy voting policies and procedures, are available (i) without charge, upon request from the fund, (ii) on the fund's Web site, if applicable, and (iii) on the SEC Web site, and to include disclosure about any proxy votes cast by the fund that are inconsistent with its policies and procedures.

A. Reasons for, and Objectives of, Proposed Amendments

As we have noted above, proxy voting decisions may play an important role in maximizing the value of a fund's investments for its shareholders. Requiring funds to disclose specific proxy voting information could enable shareholders to make an informed assessment as to whether funds are utilizing proxy voting for the benefit of fund shareholders. We are proposing these amendments because we believe that requiring management investment companies to disclose their proxy policies and procedures as well as voting records will result in greater transparency for fund shareholders regarding the overall management of their investments. We also believe it is possible to achieve this improved disclosure quickly and inexpensively because of the advancements in technology over the last 30 years, such as the Internet.

B. Legal Basis

The Commission is proposing amendments to Forms N–1A, N–2, N–3, and N–CSR pursuant to authority set forth in sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), and 77z–3], sections 10(b), 13, 15(d), 23(a), and 36 of the Exchange Act [15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm], and sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–8, 80a–24(a), 80a–29, and 80a–37].

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[58] Approximately 205 out of 3700 investment companies that would be affected by this rule meet this definition.[59]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments would require a fund to disclose in its SAI its policies and procedures used to determine how to vote proxies for the securities held in its portfolio, and to provide disclosure regarding the availability of its proxy voting record to shareholders. The proposals would also require a fund to file with the Commission, as part of its reports on proposed Form N–CSR, its complete proxy voting record for the period covered by the report. Finally, the proposals would require a fund to include in its annual and semi-annual reports to shareholders disclosure that this proxy voting record, and the fund's proxy voting policies and procedures, are available (i) without charge, upon request, from the fund, (ii) on the fund's Web site, if applicable, and (iii) on the SEC Web site, and to include disclosure about any proxy votes cast by the fund that are inconsistent with its policies and procedures.

The Commission estimates some one-time formatting and ongoing costs and burdens that would be imposed on all funds, but which may have a relatively greater impact on smaller firms. These include the costs related to disclosing proxy voting policies and procedures to fund shareholders; filing proxy voting records with the Commission on proposed Form N–CSR; and disclosing voting records via the Internet, U.S. mail, or other means. These costs also could include expenses for computer time, legal and accounting fees, information technology staff, and additional computer and telephone equipment. However, we believe, based on consultations with a number of fund complexes, including smaller fund complexes, that many investment companies presently collect in-house or outsource proxy voting information on a basis at least as current as semi-annually

[58] 17 CFR 270.0–10.

[59] This estimate is based on figures compiled by Division of Investment Management staff regarding investment companies registered on Form N–1A, Form N–2, and Form N–3. In determining whether an insurance company separate account is a small entity for purposes of the Regulatory Flexibility Act, the assets of insurance company separate accounts are aggregated with the assets of their sponsoring insurance companies. Investment Company Act rule 0–10(b) [17 CFR 270.0–10(b)]. Currently, no insurance company separate account filing on Form N–3 qualifies as a small entity.

and, therefore, that the marginal cost increases for most funds would be minimal.

The Commission solicits comment on the effect the proposed amendments would have on small entities.

E. Duplicative, Overlapping or Conflicting Federal Rules

There are no rules that duplicate, overlap, or conflict with the proposed amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the proposed amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The proposed disclosure amendments would provide shareholders with greater transparency regarding a fund's proxy voting policies and procedures, as well as records of votes cast. Different disclosure requirements for small entities, such as reducing the level of proxy voting disclosure that small entities would have to provide shareholders, may create the risk that those shareholders would not receive sufficient information to make an informed evaluation as to whether the fund's board and its investment adviser are complying with their fiduciary duties to vote proxies of portfolio securities in the best interest of fund shareholders. We believe it is important for the proxy disclosure that would be required by the proposed amendments to be provided to shareholders by all funds, not just funds that are not considered small entities.

We have endeavored through the proposed amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the proposed amendments to the same degree as other investment companies. Further clarification, consolidation, or simplification of the proposals for funds that are small entities would be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

G. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this analysis. Comment is specifically requested on the number of small entities that would be affected by the proposed amendments and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–36–02; this file number should be included on the subject line if e-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[60]

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Enforcement Fairness Act of 1996,[61] a rule is ''major'' if it results or is likely to result in:

- an annual effect on the economy of $100 million or more;
- a major increase in costs or prices for consumers or individual industries; or
- significant adverse effects on competition, investment, or innovation.

The Commission requests comment on the potential impact of the proposed amendments on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

IX. Statutory Authority

The Commission is proposing amendments to Forms N–1A, N–2, N–3, and proposed Form N–CSR pursuant to authority set forth in sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), and 77z–3], sections 10(b), 13, 15(d), 23(a), and 36 of the Exchange Act [15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm], and sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–8, 80a–24(a), 80a–29, and 80a–37].

List of Subjects

17 CFR Parts 239 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

2. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

[60] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[61] Pub. L. 104–21, Title II, 110 Stat. 857 (1996).

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

3. The authority citation for part 274 is amended by adding the following citations to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

Section 274.101 is also issued under secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

Section 274.128 is also issued under secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

4. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. In Item 13, adding paragraph (f); and

b. In Item 22, adding paragraphs (b)(7) and (8) and (c)(5) and (6).

These amendments read as follows:

Note: The text of Form N–1A does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–1A

* * * * *

Item 13. Management of the Fund

* * * * *

(f) *Proxy Voting Policies.* Unless the Fund invests exclusively in non-voting securities, describe the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Fund uses when a vote presents a conflict between the interests of Fund shareholders, on the one hand, and those of the Fund's investment adviser; principal underwriter; or any affiliated person of the Fund, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Fund's investment adviser, or any other third party, that the Fund uses, or that are used on the Fund's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that shareholders may obtain information regarding how the Fund voted proxies relating to portfolio securities (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (2) on the Fund's website, if applicable; and (3) on the Commission's Web site at *http://www.sec.gov.*

Instruction. When a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for information regarding how the Fund voted proxies relating to portfolio securities, the Fund (or financial intermediary) must send the information disclosed in response to Item 2 in the Fund's most recently filed Form N–CSR within 3 business days of receipt of the request by first-class mail or other means designed to ensure equally prompt delivery.

* * * * *

Item 22. Financial Statements

* * * * *

(b) * * *

(7) A statement that the Fund's proxy voting record for the period covered by the report, and a description of the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities, are available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Fund's Web site, if applicable; and (iii) on the Commission's Web site at *http://www.sec.gov.*

Instruction. When a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's proxy voting record, or a request for a description of the policies and procedures that the Fund uses to determine how to vote proxies, the Fund (or financial intermediary) must send the information disclosed in response to Item 2 in the Fund's most recently filed Form N–CSR, in the case of a request for the Fund's proxy voting record, or the information disclosed in response to Item 13(f) of this Form, in the case of a request for a description of the Fund's policies and procedures, within 3 business days of receipt of the request by first-class mail or other means designed to ensure equally prompt delivery.

(8) In the case of each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report and with respect to which the Fund was entitled to vote and voted (or failed to vote) in a manner that was inconsistent with the Fund's proxy voting policies and procedures disclosed pursuant to Item 13(f), the following information:

(i) The name of the issuer of the portfolio security;

(ii) The exchange ticker symbol of the portfolio security;

(iii) The Council on Uniform Securities Identification Procedures (''CUSIP'') number for the portfolio security;

(iv) The shareholder meeting date;

(v) A brief identification of the matter voted on;

(vi) Whether the matter was proposed by the issuer or by a security holder;

(vii) Whether the Fund cast its vote on the matter;

(viii) How the Fund cast its vote (*e.g.*, for or against proposal, or abstain; for or withhold regarding election of directors);

(ix) Whether the Fund cast its vote for or against management; and

(x) The reasons why the Fund voted, or failed to vote, in a manner that was inconsistent with its proxy voting policies and procedures.

(c) * * *

(5) A statement that the Fund's proxy voting record for the period covered by the report, and a description of the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities, are available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Fund's Web site, if applicable; and (iii) on the Commission's Web site at *http://www.sec.gov.*

Instruction. When a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's proxy voting record, or a request for a description of the policies and procedures that the Fund uses to determine how to vote proxies, the Fund (or financial intermediary) must send the information disclosed in response to Item 2 in the Fund's most recently filed Form N–CSR, in the case of a request for the Fund's proxy voting record, or the information disclosed in response to Item 13(f) of this Form, in the case of a request for a description of the Fund's policies and procedures, within 3 business days of receipt of the request by first-class mail or other means designed to ensure equally prompt delivery.

(6) In the case of each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report and with respect to which the Fund was entitled to vote and voted (or failed to vote) in a manner that was inconsistent with the Fund's proxy voting policies and procedures disclosed pursuant to Item 13(f), the following information:

(i) The name of the issuer of the portfolio security;

(ii) The exchange ticker symbol of the portfolio security;

(iii) The Council on Uniform Securities Identification Procedures (''CUSIP'') number for the portfolio security;

(iv) The shareholder meeting date;

(v) A brief identification of the matter voted on;

(vi) Whether the matter was proposed by the issuer or by a security holder;

(vii) Whether the Fund cast its vote on the matter;

(viii) How the Fund cast its vote (*e.g.*, for or against proposal, or abstain; for or withhold regarding election of directors);

(ix) Whether the Fund cast its vote for or against management; and

(x) The reasons why the Fund voted, or failed to vote, in a manner that was inconsistent with its proxy voting policies and procedures.

* * * * *

5. Form N–2 (referenced in §§ 239.14 and 274.11a–1) is amended by:

a. In Item 18, adding paragraph 16;

b. In Item 23, removing ''and'' from the end of Instruction 4.e.;

c. In Item 23, removing the period from the end of Instruction 4.f. and in its place adding a semi-colon;

d. In Item 23, adding Instructions 4.g. and 4.h.;

e. In Item 23, removing ''and'' from the end of Instruction 5.c.;

f. In Item 23, removing the period from the end of Instruction 5.d. and in its place adding a semi-colon;

g. In Item 23, adding Instructions 5.e. and 5.f.;

h. In Item 23, redesignating Instruction 6 as Instruction 7; and

i. In Item 23, adding new Instruction 6.

These amendments read as follows:

Note: The text of Form N–2 does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–2

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Item 18. Management

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16. Unless the Registrant invests exclusively in non-voting securities, describe the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Registrant uses when a vote presents a conflict between the interests of the Registrant's shareholders, on the one hand, and those of the Registrant's investment adviser; principal underwriter; or any affiliated person (as defined in section 2(a)(3) of the 1940 Act (15 U.S.C. 80a–2(a)(3)) and the rules thereunder) of the Registrant, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Registrant's investment adviser, or any other third party, that the Registrant uses, or that are used on the Registrant's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that shareholders may obtain information regarding how the Registrant voted proxies relating to portfolio securities (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Registrant's Web site, if applicable; and (iii) on the Commission's Web site at *http://www.sec.gov.*

Instruction. When a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for information regarding how the Registrant voted proxies relating to portfolio securities, the Registrant (or financial intermediary) must send the information disclosed in response to Item 2 in the Registrant's most recently filed Form N–CSR within 3 business days of receipt of the request by first-class mail or other means designed to ensure equally prompt delivery.

* * * * *

Item 23. Financial Statements

* * * * *

Instructions:

* * * * *

4. * * *

g. a statement that the Registrant's proxy voting record for the period covered by the report, and a description of the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities, are available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (2) on the Registrant's Web site, if applicable; and (3) on the Commission's Web site at *http://www.sec.gov;* and

h. in the case of each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report and with respect to which the Registrant was entitled to vote and voted (or failed to vote) in a manner that was inconsistent with the Registrant's proxy voting policies and procedures most recently disclosed pursuant to Item 18.16 of this Form or Item 3 of Form N–CSR, the following information:

(1) the name of the issuer of the portfolio security;

(2) the exchange ticker symbol of the portfolio security;

(3) the Council on Uniform Securities Identification Procedures (''CUSIP'') number for the portfolio security;

(4) the shareholder meeting date;

(5) a brief identification of the matter voted on;

(6) whether the matter was proposed by the issuer or by a security holder;

(7) whether the Registrant cast its vote on the matter;

(8) how the Registrant cast its vote (*e.g.*, for or against proposal, or abstain; for or withhold regarding election of directors);

(9) whether the Registrant cast its vote for or against management; and

(10) the reasons why the Registrant voted, or failed to vote, in a manner that was inconsistent with its proxy voting policies and procedures.

5. * * *

e. a statement that the Registrant's proxy voting record for the period covered by the report, and a description of the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities, are available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (2) on the Registrant's Web site, if applicable; and (3) on the Commission's Web site at *http://www.sec.gov;* and

f. in the case of each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report and with respect to which the Registrant was entitled to vote and voted (or failed to vote) in a manner that was inconsistent with the Registrant's proxy voting policies and procedures most recently disclosed pursuant to Item 18.16 of this Form or Item 3 of Form N–CSR, the following information:

(1) the name of the issuer of the portfolio security;

(2) the exchange ticker symbol of the portfolio security;

(3) the Council on Uniform Securities Identification Procedures (''CUSIP'') number for the portfolio security;

(4) the shareholder meeting date;

(5) a brief identification of the matter voted on;

(6) whether the matter was proposed by the issuer or by a security holder;

(7) whether the Registrant cast its vote on the matter;

(8) how the Registrant cast its vote (*e.g.*, for or against proposal, or abstain; for or withhold regarding election of directors);

(9) whether the Registrant cast its vote for or against management; and

(10) the reasons why the Registrant voted, or failed to vote, in a manner that was inconsistent with its proxy voting policies and procedures.

6. When a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's proxy voting record, or a request for a description of the policies and procedures that the Registrant uses to determine how to vote proxies, the Registrant (or financial intermediary) must send the information disclosed in response to Item 2 in the Registrant's most recently filed Form N–CSR, in the

case of a request for the Registrant's proxy voting record, or the information most recently disclosed in response to Item 18.16 of this Form or Item 3 of Form N–CSR, in the case of a request for a description of the Registrant's policies and procedures, within 3 business days of receipt of the request by first-class mail or other means designed to ensure equally prompt delivery.

* * * * *

6. Form N–3 (referenced in §§ 239.17 and 274.11b) is amended by:

a. In Item 20, adding paragraph (o);

b. In Item 27(a), removing ''and'' from the end of Instruction 4(v);

c. In Item 27(a), removing the period from the end of Instruction 4(vi) and in its place adding a semi-colon;

d. In Item 27(a), adding Instructions 4(vii) and 4(viii);

e. In Item 27(a), removing ''and'' from the end of Instruction 5(iii);

f. In Item 27(a), removing the period from the end of Instruction 5(iv) and in its place adding a semi-colon;

g. In Item 27(a), adding Instructions 5(v) and 5(vi);

h. In Item 27(a), redesignating Instruction 6 as Instruction 7; and

i. In Item 27(a), adding new Instruction 6.

These amendments read as follows:

Note: The text of Form N–3 does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–3

* * * * *

Item 20. Management

* * * * *

(o) Unless the Registrant invests exclusively in non-voting securities, describe the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Registrant uses when a vote presents a conflict between the interests of the Registrant's contractowners, on the one hand, and those of the Registrant's investment adviser; principal underwriter; or any affiliated person (as defined in Section 2(a)(3) of the 1940 Act (15 U.S.C. 80a–2(a)(3)) and the rules thereunder) of the Registrant, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Registrant's investment adviser, or any other third party, that the Registrant uses, or that are used on the Registrant's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that contractowners may obtain information regarding how the Registrant voted proxies relating to portfolio securities (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Registrant's Web site, if applicable; and (iii) on the Commission's Web site at *http://www.sec.gov.*

Instruction. When a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for information regarding how the Registrant voted proxies relating to portfolio securities, the Registrant (or financial intermediary) must send the information disclosed in response to Item 2 in the Registrant's most recently filed Form N–CSR within 3 business days of receipt of the request by first-class mail or other means designed to ensure equally prompt delivery.

* * * * *

Item 27. Financial Statements

(a) * * *

Instructions:

* * * * *

4. * * *

(vii) a statement that the Registrant's proxy voting record for the period covered by the report, and a description of the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities, are available (A) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (B) on the Registrant's Web site, if applicable; and (C) on the Commission's Web site at *http://www.sec.gov;* and

(viii) in the case of each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report and with respect to which the Registrant was entitled to vote and voted (or failed to vote) in a manner that was inconsistent with the Registrant's proxy voting policies and procedures disclosed pursuant to Item 20(o), the following information:

(A) the name of the issuer of the portfolio security;

(B) the exchange ticker symbol of the portfolio security;

(C) the Council on Uniform Securities Identification Procedures (''CUSIP'') number for the portfolio security;

(D) the shareholder meeting date;

(E) a brief identification of the matter voted on;

(F) whether the matter was proposed by the issuer or by a security holder;

(G) whether the Registrant cast its vote on the matter;

(H) how the Registrant cast its vote (*e.g.*, for or against proposal, or abstain; for or withhold regarding election of directors);

(I) whether the Registrant cast its vote for or against management; and

(J) the reasons why the Registrant voted, or failed to vote, in a manner that was inconsistent with its proxy voting policies and procedures.

5. * * *

(v) a statement that the Registrant's proxy voting record for the period covered by the report, and a description of the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities, are available (A) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (B) on the Registrant's Web site, if applicable; and (C) on the Commission's Web site at *http://www.sec.gov;* and

(vi) in the case of each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report and with respect to which the Registrant was entitled to vote and voted (or failed to vote) in a manner that was inconsistent with the Registrant's proxy voting policies and procedures disclosed pursuant to Item 20(o), the following information:

(A) the name of the issuer of the portfolio security;

(B) the exchange ticker symbol of the portfolio security;

(C) the Council on Uniform Securities Identification Procedures (''CUSIP'') number for the portfolio security;

(D) the shareholder meeting date;

(E) a brief identification of the matter voted on;

(F) whether the matter was proposed by the issuer or by a security holder;

(G) whether the Registrant cast its vote on the matter;

(H) how the Registrant cast its vote (*e.g.*, for or against proposal, or abstain; for or withhold regarding election of directors);

(I) whether the Registrant cast its vote for or against management; and

(J) the reasons why the Registrant voted, or failed to vote, in a manner that was inconsistent with its proxy voting policies and procedures.

6. When a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's proxy voting record, or a request for a description of the policies and procedures that the Registrant uses to determine how to vote proxies, the Registrant (or financial intermediary) must send the information disclosed in response to Item 2 in the Registrant's most recently filed Form N–CSR, in the case of a request for the Registrant's proxy voting record, or the information disclosed in response to Item 20(o) of

this Form, in the case of a request for a description of the Registrant's policies and procedures, within 3 business days of receipt of the request by first-class mail or other means designed to ensure equally prompt delivery.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

7. Form N–CSR (referenced in §§ 249.331 and 274.128; as proposed in 67 FR 57298 (9/9/02)) is amended by:

a. Redesignating Item 2 as Item 4; and

b. Adding new Items 2 and 3 to read as follows:

Note: The text of Form N–CSR does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–CSR

* * * * *

Item 2. Proxy Voting Records.

Disclose the following information for each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report provided pursuant to Item 1 and with respect to which the registrant was entitled to vote:

(1) The name of the issuer of the portfolio security;

(2) The exchange ticker symbol of the portfolio security;

(3) The Council on Uniform Securities Identification Procedures (''CUSIP'') number for the portfolio security;

(4) The shareholder meeting date;

(5) A brief identification of the matter voted on;

(6) Whether the matter was proposed by the issuer or by a security holder;

(7) Whether the registrant cast its vote on the matter;

(8) How the registrant cast its vote (*e.g.*, for or against proposal, or abstain; for or withhold regarding election of directors); and

(9) Whether the registrant cast its vote for or against management.

Instruction. In the case of a registrant that offers multiple series of shares, provide the information required by this Item separately for each series. The term ''series'' means shares offered by a registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with Rule 18f–2(a) under the Investment Company Act of 1940 (17 CFR 270.18f–2(a)).

Item 3. Disclosure of Proxy Voting Policies and Procedures for Closed-End Management Investment Companies

A closed-end management investment company that, pursuant to Item 1, is including a copy of an annual report transmitted to stockholders must, unless it invests exclusively in non-voting securities, describe the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities, including the procedures that the company uses when a vote presents a conflict between the interests of its shareholders, on the one hand, and those of the company's investment adviser; principal underwriter; or any affiliated person (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3)) and the rules thereunder) of the company, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the company's investment adviser, or any other third party, that the company uses, or that are used on the company's behalf, to determine how to vote proxies relating to portfolio securities.

* * * * *

By the Commission.

Dated: September 20, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–24409 Filed 9–25–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–2059; File No. S7–38–02]

RIN 3235–AI65

Proxy Voting By Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for comment a new rule and rule amendments under the Investment Advisers Act of 1940 that would address an investment adviser's fiduciary obligation to clients who have given the adviser authority to vote their proxies. Under our proposal, an investment adviser that exercises voting authority over client proxies would be required to adopt and implement policies and procedures that are reasonably designed to ensure that the adviser votes proxies in the best interest of clients, disclose to clients information about those procedures and policies and how clients may obtain information on how the adviser has voted their proxies, and retain certain records relating to proxy voting. The rule and rule amendments are designed to assure that advisers vote proxies in the best interest of their clients and provide clients with information about how their proxies are voted.

DATES: Comments must be received on or before December 6, 2002.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods.

Comments sent by hardcopy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–38–02; if e-mail is used, this file number should be included on the subject line. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Daniel S. Kahl, Senior Counsel, or Jamey Basham, Special Counsel, at 202–942–0719, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'' or ''SEC'') is requesting public comment on proposed rule 206(4)–6 [17 CFR 275.206(4)–6] and proposed amendments to rule 204–2 [17 CFR 275.204–2] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (''Advisers Act'' or ''Act'').

I. Background

Investment advisers today have discretionary investment authority with respect to almost $19 trillion dollars of assets, including large holdings in equity securities.[2] In most cases, these

[1] We do not edit personal or identifying information, such as names or E-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] Approximately $7 trillion of these assets are held by mutual funds. In a companion release, we are also publishing proposed amendments that would require mutual funds to disclose policies and procedures they use to vote proxies on their portfolio securities, and to make available to their

Continued

advisers are given authority to vote proxies relating to equity securities on behalf of their clients.[3] The enormity of this voting power gives advisers significant ability collectively, and in many cases individually, to affect the outcome of shareholder votes and to substantially influence the governance of corporations.[4] Advisers are thus in a position to have a significant effect on the future of corporations and the value of securities held by advisory clients.

The federal securities laws do not specifically address how advisers must exercise their voting authority. Under the Advisers Act, an investment adviser is, however, a fiduciary that owes its clients a duty of ''utmost good faith, and full and fair disclosure of all material facts,'' as well as an affirmative obligation ''to employ reasonable care to avoid misleading'' its clients.[5] An adviser owes its client a fiduciary duty with respect to all services undertaken on the client's behalf, including the voting of proxies.[6] An adviser's fiduciary duty includes the duty of care and the duty of loyalty to clients. The duty of care requires an adviser given authority to vote proxies to monitor corporate events and to vote the proxies.[7] The duty of loyalty requires an adviser to vote proxies in a manner consistent with the best interest of its client and precludes the adviser from subrogating the client's interest to its own.[8]

The Commission is concerned with conflicts of interest between advisers and their clients. Advisers today frequently have business interests that may expose them to pressure to vote in a manner that may not be in the best interest of their clients.[9] Many advisers (or their affiliates) manage assets, administer employee benefit plans, or provide brokerage, underwriting, insurance, or banking services to companies whose management is soliciting proxies. Failure to vote proxies in favor of the management of such a company may harm the adviser's relationship with the company, particularly when there is a contested matter before shareholders. In some cases, the adviser may have a business relationship, not with the company, but with a proponent of a proxy proposal, that may affect how it casts client votes. For example, the adviser may manage money for an employee group.

Other types of conflicts may affect how advisers vote client proxies. The adviser may have personal and business relationships with participants in proxy contests, corporate directors or candidates for corporate directorships, or the adviser may have a personal interest in the outcome of a particular matter before shareholders. For example, an executive of the adviser may have a spouse or other relative who serves as a director of a company or who is employed by the company.

These conflicts are not new. We described them in detail in our 1971 report to Congress on Institutional Investors.[10] In 2000, we expressed concern about these conflicts and proposed to require advisers to disclose to clients the policies that they had in place, if any, to address these conflicts.[11] The Department of Labor has recognized that they can adversely affect the management of employee benefit plans.[12]

Under the Act, an adviser with a material conflict of interest must fully disclose that conflict to its client before voting the client's proxy. Many advisers, instead, have adopted policies and procedures that are designed to ensure that client proxies are properly voted, material conflicts are avoided, and fiduciary obligations are otherwise fulfilled.[13] Not all advisers have these procedures in place, not all advisers that have procedures make them available to their clients, and not all advisers that vote client proxies make the votes available to clients. The importance of proxy voting by investment advisers—both to their clients and to our system of corporate governance—as well as the

shareholders the specific proxy votes they cast. *See Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies,* Investment Company Act Release No. 25739 (Sept. 20, 2002).

[3] In the mid 1990s, the Commission approved rule changes submitted by the New York Stock Exchange, the National Association of Securities Dealers, Inc., and the American Stock Exchange to allow investment advisers to receive proxy materials and to vote proxies on behalf of the beneficial owners of securities. *See, e.g., Order Approving Proposed Rule Changes by the NASD,* Securities Exchange Act Release No. 35681 (May 5, 1995) [60 FR 25749 (May 12, 1995)].

[4] *See generally* Board of Governors of the Federal Reserve System, *Flow of Funds Accounts of the U.S., Flows and Outstandings, First Quarter 2002* (June 6, 2002) (at table L. 213) (data indicate institutional investors control approximately 50% of the outstanding corporate equities in the United States); A. A. Sommer, Jr., *Symposium: Defining the Corporate Constituency: Corporate Governance in the Nineties: Managers vs. Institutions,* 59 U. Cin. L. Rev. 357 (Fall 1990) (discussing the ''profound'' effects of institutional ownership and the inevitable influence it will have on management conduct, the laws governing corporations and fiduciaries, and the American economy); Beth Healy, *Big Investors Assuming a More Activist Stance,* The Boston Globe, July 11, 2002, at C1 (discussing an activist stance by several large institutional investors on corporate governance issues).

[5] *SEC* v. *Capital Gains Research Bureau, Inc.,* 375 U.S. 180, 194 (1963) (interpreting section 206 of the Advisers Act [15 U.S.C. 80b–6]).

[6] Unlike the anti-fraud provisions in other provisions of the federal securities laws, section 206 is not limited to fraud in connection with securities transactions. The relevant provisions of section 206 do not refer to dealings in securities, but are stated in terms of the effect of the prohibited conduct on clients. Sections 206(1), 206(2), and 206(4) [15 U.S.C. 80b–6(1), 80b–6(2), 80b6–(4)].

[7] We do not mean to suggest, however, that an adviser that fails to vote a proxy would thereby violate its fiduciary obligations to its client under the Act. There may be good reasons for an adviser to refrain from voting a proxy when, for example, the cost of voting the proxy exceeds the expected benefit. An adviser may not, however, ignore or be negligent in fulfilling the obligation it has assumed to vote client proxies.

[8] The scope of the adviser's responsibilities with respect to voting proxies would ordinarily be determined by the adviser's contract with its client, and the investment objectives and policies of its client. We are not addressing in this release the extent to which advisers must or should become ''shareholder activists,'' such as actively engaging in soliciting proxies or supporting or opposing matters before shareholders. As a practical matter, advisers will determine whether to engage in such activism based on a cost-benefit analysis of the considered activism. *See* Robert C. Pozen, *Institutional Investors: The Reluctant Activists,* Harv. Bus. Rev., Jan.-Feb. 1994, at 140. In conducting this analysis, the adviser might consider the size of the client's position in the company, the nature of the action proposed to be taken, the cost of the particular course of action, and the probable effect of the proposed action, if any, on the value of the client's securities.

[9] *See* Employee Benefit Research Institute Issue Brief, *Voting Private Pension Proxies: Some New Evidence and Some Old Questions,* (Sept. 1987) (No. 70 at 21) (reporting 65% of investment managers surveyed experienced direct or indirect pressure regarding proxy voting).

[10] U.S. Securities and Exchange Commission, *Institutional Investor Study Report of the Securities and Exchange Commission,* in H.R. Doc. No. 92–64, Part 5.E. at 2749–2763; *See also* Betty Linn Krikorian, *Fiduciary Standards in Pension and Trust Fund Management* (1989), at 210–219; James E. Heard and Howard D. Sherman, Investor Responsibility Research Center, Conflicts of Interest in the Proxy Voting System (1987).

[11] *Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV,* Investment Advisers Act Release No. 1862 (Apr. 5, 2000) [65 FR 20524 (Apr. 17, 2000)] at n. 192. In addition, former Commissioner Carey highlighted similar concerns about proxy voting by advisers in a December 1999 speech; Paul R. Carey, Remarks to the Investment Company Institute Procedures Conference (Dec. 9, 1999), (available at <*http://www.sec.gov/news/speech/speecharchive/1999/spch335.htm*>).

[12] Department of Labor, Interpretive Bulletin Relating to Written Statements of Investment Policy, Including Proxy Voting Guidelines, 29 CFR 2509.94–2 (2001) (''DOL Interp. Bulletin''). The bulletin states that under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001, *et. seq.*] (''ERISA'') the fiduciary act of managing ERISA assets includes the voting of proxies, and in voting those proxies the fiduciary may only consider the best interest of plan participants. Many investment advisers are ''investment managers,'' that are delegated authority to manage plan assets and vote plan proxies under ERISA. When managing plan assets and voting proxies, advisers are also subject to the fiduciary standards of ERISA.

[13] *See generally* Association for Investment Management and Research, *Standards of Practice Handbook, The Code of Ethics and The Standards of Professional Conduct* (1999) (Eighth Edition at 161) (discussing elements of a proxy voting system to allow investment advisers to meet their fiduciary obligation when voting proxies).

many conflicts faced by advisers suggest a need for the Commission to address proxy voting by investment advisers under the Advisers Act. Therefore, the Commission is proposing a new rule under the Advisers Act designed to prevent material conflicts of interest from affecting the manner in which advisers vote client proxies.

II. Discussion

We propose a new rule under section 206(4) of the Act that would require certain advisers to adopt and implement procedures for voting proxies, describe those procedures to their clients, and disclose how clients may obtain information about how the adviser has voted proxies. We are also proposing amendments to rule 204–2 under the Advisers Act to require advisers to keep certain records regarding their proxy votes on behalf of clients.

A. Rule 206(4)–6

Under proposed rule 206(4)–6, it would be a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act for an investment adviser to exercise voting authority with respect to client securities, unless: the adviser has adopted and implements written policies and procedures that are reasonably designed to ensure that the adviser votes proxies in the best interest of its clients, the adviser discloses to clients how they may obtain information on how the adviser voted their proxies, and the adviser has disclosed its proxy voting procedures to its clients.[14] We describe each of the elements of the rule below.[15]

1. Advisers Subject to the Rule

a. Registered Advisers. The rule would apply to advisers registered with the Commission that have voting authority with respect to client securities. Rule 206(4)–6, like our other anti-fraud rules under the Advisers Act, would not apply to smaller advisers that are registered with state securities authorities. Since the enactment of the National Securities Markets Improvement Act in 1996 (''NSMIA''), we have deferred to state securities authorities the regulation of these advisers, which do not have voting authority over substantial amounts of assets.[16] The rule would also not apply to advisers that rely on an exemption from registration under section 203(b) of the Act,[17] such as those advisers that have had fewer than 15 clients during the last twelve months, which we do not examine and to which most other provisions of the Act do not apply.

- We request comment on the scope of proposed rule 206(4)–6. Should the rule apply to state-registered advisers? Should it apply to advisers that rely on an exemption from registration under section 203(b) of the Act?

b. Advisers with Voting Authority. Because we are concerned primarily with the proper exercise of voting authority of client proxies, only advisers that have voting authority would be subject to the rule.[18] Advisers whose clients retain voting authority would not be required to adopt procedures or policies and would not be required to make any disclosures to clients under the rule. The rule would therefore not apply if an adviser provides a client with advice only as to how the client should vote a proxy. We are concerned that applying the rule to such advisers could result in numerous unintentional violations of the rule if, for example, a financial planner that never votes client proxies (and thus does not have policies and procedures and has not made the required disclosures) were to respond to a question from a client. The Advisers Act's general anti-fraud provisions would continue to apply, requiring the planner to disclose any material conflict that it may have to the client receiving the advice.

- Comment is requested regarding whether we should require all registered advisers to have policies and procedures.
- Are there circumstances where an adviser with authority to vote client proxies should be exempt from the rule's requirements?
- In some cases, clients retain some authority over the proxy vote, *e.g.*, the client retains voting authority with respect to certain issues or the contract provides that the adviser should consult with the client on voting matters. How should the rule apply in these circumstances?

2. Written Policies and Procedures

Rule 206(4)–6 would require investment advisers subject to the rule to adopt and implement written policies and procedures that are reasonably designed to ensure that the adviser votes proxies in the best interest of clients.[19] Although advisers' proxy voting policies typically include a number of common elements,[20] we are not proposing to specify the procedures or policies that advisers must adopt. Investment advisers registered with us have such different types of conflicts and organizational structures that we believe a ''one-size-fits-all'' approach would not work.[21]

The rule would, however, contain three requirements. First, the proxy voting policies and procedures must be written.[22] Second, they must describe

[14] Section 206(4) of the Act [15 U.S.C. 80b–6(4)] gives the Commission authority to adopt rules ''reasonably designed to prevent such acts, practices, and courses of business as are fraudulent, deceptive or manipulative.'' We are proposing rule 206(4)–6 as a means that we believe is reasonably necessary to prevent advisers from defrauding their clients in connection with the exercise of their proxy voting authority.

[15] Nothing in this proposal reduces or alters any fiduciary obligation applicable to any investment adviser (or person associated with any investment adviser).

[16] *See* section 203A of the Advisers Act, [15 U.S.C. 80b–3a], enacted as part of Title III of NSMIA. Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the U.S. Code). NSMIA allocated regulatory authority for advisers with less than $25 million of assets under management to state securities authorities. After NSMIA, our authority under section 206 continues to extend to state-registered advisers. However, when we adopted rules implementing NSMIA in 1997, we revised the anti-fraud rules under section 206 to apply only to SEC-registered investment advisers because the rules ''contain prophylactic provisions, and that after the effective date of [Title III of NSMIA] the application of these provisions to state-registered advisers is more appropriately a matter of state law.'' *Rules Implementing Amendments to the Investment Advisers Act of 1940,* Investment Advisers Act Release No. 1633 (May 15, 1997) [62 FR 28112 (May 22, 1997)].

[17] 17 U.S.C. 80b–3(b).

[18] Some advisory contracts do not explicitly give the adviser voting authority. Instead, the adviser's authority to vote proxies is implied in the overall delegation of authority provided in the advisory contract, power of attorney, trust instrument or other document. Advisers entering into such contracts would be subject to the rule. *Cf.* DOL Interp. Bulletin, *supra* note (if the investment management agreement does not expressly preclude the investment manager from voting proxies, the investment manager has the exclusive responsibility for voting).

[19] Proposed rule 206(4)–6(a). Nothing in the proposed rule would prevent an adviser from having different policies and procedures for different clients. Thus, the board of directors of an investment company could adopt and require an investment adviser to use different policies and procedures than the adviser uses with respect to its other clients.

[20] These common elements frequently deal with policies on particular types of matters that may be presented to shareholders, such as changes in corporate governance, changes in corporate structures, adoption or amendments to compensation plans (including stock options) and matters involving social issues or corporate responsibility. *See supra* note 2, *Disclosure of Proxy Voting Policies and Proxy Voting Records By Registered Management Investment Companies,* at Section II.A.

[21] Advisers registered with the Commission have assets under management that range from $580,000,000,000 to $7,020. While 4,923 are organized as corporations (of which 3,265, or 66%, have financial industry affiliations), 367 are organized as sole proprietorships (of which 118, or 32%, have financial industry affiliations). While 94 of our advisers have more than 1,000 employees, 5204 have 10 or fewer. Information obtained from SEC—registered investment adviser Form ADV filings as of September 9, 2002.

[22] ''Written'' policies and procedures would, of course, include documents in electronic format. *See*

Continued

how the adviser addresses material conflicts between its interests and those of its clients with respect to proxy voting. Finally, the policies and procedures must address how the adviser resolves those conflicts in the best interest of clients. The rule thus incorporates the standard that we believe applies to advisers as fiduciaries under the Advisers Act.[23] We have included the standard in the proposed rule to clarify the obligation of advisers and to require that the best interest of clients be the focus of the policies and procedures.[24]

In addition, we believe effective proxy voting policies and procedures of an adviser should identify personnel responsible for monitoring corporate actions, describe the basis on which decisions are made to vote proxies, and identify personnel (or groups) involved in making voting decisions and those responsible for ensuring that proxies are submitted in a timely manner. The extent to which the adviser relies on the advice of third parties or delegates to committees should also ordinarily be covered by the policies. Of course, the scope of the policies and procedures will turn on the nature of the adviser's advisory business, the types of securities portfolios it manages, and the extent to which clients, such as registered investment companies, have adopted their own procedures.[25]

Many advisers may also be subject to fiduciary standards under ERISA and state common law.[26] We believe that the ''best interest'' standard in the proposed rule is not inconsistent with those laws in any material respect.

- Is the standard we have set forth in the rule clear?
- Are there conflicts with other laws that we should address?
- Should we include in the text of the rule additional required policies and procedures?
- Alternatively, should we include in our adopting release additional policies and procedures that we believe are ''best practices'' for advisers to adopt? Commenters favoring additional policies and procedures should give specific recommendations.

3. Disclosure of How Clients Can Obtain Information on Votes

Rule 206(4)–6 would also require an adviser subject to the rule to disclose to clients how they can obtain information from the adviser on how the adviser voted their proxies.[27] We propose this provision for similar reasons to those we set forth in our companion release that would require investment companies to disclose how they have voted their proxies.[28] We believe that ''sunshine'' on these votes will lead advisers to pay greater attention to their fiduciary obligations. Fully informed clients will serve as a check on their advisers' exercise of voting authority: clients who disapprove of how advisers vote their proxies may decide to reclaim the responsibility to vote proxies, provide the adviser with instructions on how to vote their proxies, or seek a different adviser whose voting policies they approve.

Our proposal—which would require disclosure of how a client can obtain information—would not prescribe a right to that information. We assume that clients have a right to information about how their own proxies have been voted.[29] And, unlike our investment company proposals, the proposed rule would not prescribe the nature, format, or scope of the information that must be disclosed. Many clients may not be interested in how the adviser votes. Those who are interested would typically only be entitled to know how the adviser has voted his or her proxies (and not those of other clients), and may need (or want) information only about one or a few critical votes. Requiring an adviser to prepare a list of votes for each client (most of whom may never request the information), specifying the time periods the information must cover (which time periods may not be responsive to a particular request), and the content of the information provided in the lists seems to us unnecessarily burdensome. Therefore, we would leave those decisions to clients and their advisers, which we would expect to be responsive to client requests.

- We request comment on our assumption that clients have the right to information about how their shares have been voted. Have advisers denied this information to clients? Should we include in the rule a right to this information? If so, what should be the scope of the right? For how many years should the adviser be required to retain information about votes and produce it upon request for a client?
- Should the rule prescribe the content and format of required disclosures, as would the investment company rules we are proposing? If so, should the content and format of the required disclosure be different in any way from the proposed investment company rules?

4. Describe Policies and Procedures to Clients

Finally, the proposed rule would require advisers subject to the rule to describe their proxy voting policies and procedures to clients and, upon request, furnish a copy of the policies and procedures to clients.[30] This disclosure would help clients understand how the adviser votes proxies and permit clients to select advisers whose procedures and policies meet their expectations.[31]

Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery Of Information, Investment Advisers Act Release No. 1562 (May 9, 1996) [61 FR 24643 (May 15, 1996)].

[23] See discussion above in Section I of this release.

[24] The rule would not preclude an adviser from seeking assistance in collecting and voting proxies from, for example, a proxy voting service. Nor would the rule prevent an adviser from delegating authority to, for example, a committee. The adviser's delegation would not alter in any way the fiduciary responsibilities of the adviser.

[25] Procedures that merely declare that all proxies will be voted in the best interests of clients would not be sufficient to meet the requirement of the proposed rule that the investment adviser adopt ''policies and procedures'' designed to assure that proxies are voted in the best interests of clients.

[26] Under ERISA, a person becomes a fiduciary to a plan by rendering it investment advice for a fee or other compensation. Section 3(21)(A)(ii) of ERISA [29 U.S.C. 1002(21)(a)(ii)]. An ERISA fiduciary must discharge its duties solely in the interest of the plan participants and for the exclusive purpose of providing benefits to plan participants with the care, prudence, and diligence that a prudent person would use. Section 404(a)(1) of ERISA [29 U.S.C. 1104(a)(1)].

[27] Proposed rule 206(4)-6(b). The requirement to disclose how a client can obtain information from the adviser on how it voted client securities could be satisfied by disclosure in the adviser's brochure. *See supra* note 11, *Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV* (proposal to require advisers that have or will accept authority to vote client proxies to include in their brochures a description of their voting policies and procedures, including what means a client can pursue to find out how the adviser voted the client's proxies in particular solicitations).

[28] *See supra* note 2, *Disclosure of Proxy Voting Policies and Proxy Voting Records By Registered Management Investment Companies.*

[29] The advisory contract could, however, limit a client's right to information about how the adviser has voted her proxy. See Restatement (Second) of Agency § 381 (''[u]nless otherwise agreed, an agent is subject to a duty to use reasonable efforts to give his principal information which is relevant to affairs entrusted him * * *''). We believe that a contract that denied information to the client about how the adviser has voted proxies would be highly unusual and, unless initiated by the client, very troublesome in light of an adviser's fiduciary obligations.

[30] Proposed rule 206(4)–6(c). The requirement to describe the adviser's policies and procedures could be satisfied by disclosure in the adviser's brochure. *See supra* note , discussing *Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV* (SEC proposal to require advisers to include this information in their brochure).

[31] In 1971, we recommended adoption of a similar requirement because we believed that ''[T]his type of public disclosure would focus the obligation of institutions to act in the interests of their beneficiaries and lead to their setting up procedures for systematic attention to questions of stockholder voting * * * the beneficiary should be able to choose the institutional manager whose policies on investment management appear to him most appropriate. The only way in which this can be

Disclosure should also serve to encourage more effective policies and procedures.[32]

B. Amendments to Rule 204–2

We are also proposing to amend rule 204–2 under the Advisers Act to require advisers subject to rule 206(4)6 to keep relevant records.[33] These records would permit our examiners to ascertain compliance with the rule. They would also be necessary for an adviser to comply with the proposed requirement to disclose how the adviser has voted proxies for clients.

Under the proposed rule amendments, each adviser subject to rule 206(4)–6 would be required to keep its proxy voting policies and procedures, records of proxy statements received, records of votes cast, records of all communications received and internal documents created that were material to the voting decision, and a record of each client request for proxy voting records and the adviser's response.[34] We are proposing to require advisers to maintain proxy voting books and records in an easily accessible place for five years, the first two years in an appropriate office of the investment adviser.[35]

III. General Request for Comment

The Commission requests comment on the rule and amendments proposed in this release, suggestions for other additions to the rule and amendments, and comment on other matters that might have an effect on the proposals contained in this release. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also requests information regarding the potential impact of the proposed rule and amendments on the economy on an annual basis. Commenters should provide empirical data to support their views.

done is to give beneficiaries full information about the policies followed.'' Letter from SEC Commissioner Richard B. Smith to Congress, transmitting the Institutional Investor Study Report (March 10, 1971), *reprinted in,* H.R. Doc No. 92–64, Part 1 (1971).

[32] The provisions of section 206 of the Act would be applicable to an investment adviser that disclosed its policies and procedures but then materially deviated from them.

[33] Those investment advisers subject to ERISA must already maintain ''adequate and accurate'' records as to the voting of ERISA plan proxies to permit monitoring by the plan trustee or other named fiduciary. *See* DOL Interp. Bulletin, *supra* note 12.

[34] Proposed rule 204–2(c)(2).

[35] Proposed rule 204–2(e)(1). These are the same retention requirements that apply to most books and records under current rule 204–2.

IV. Paperwork Reduction Act

The proposed rule and amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[36] One of the collections of information is new. The Commission has submitted this new collection to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title of this new collection is ''Rule 206(4)–6;'' OMB has not yet assigned it a control number. The other collection of information takes the form of amendments to a currently-approved collection titled ''Rule 204–2,'' under OMB control number 3235–0278. The Commission has also submitted the amendments to this collection to the OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. 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 control number.

The collection of information under rule 206(4)–6 is necessary to assure that investment advisers that vote proxies for their clients vote those proxies in their clients' best interest and provide their clients information about how their proxies were voted. This collection of information is mandatory. The respondents are investment advisers registered with us that vote proxies with respect to clients' securities. Clients of these investment advisers use the information collected to assess investment advisers' proxy voting policies and procedures and to monitor the adviser's performance of its proxy voting activities. Responses to the disclosure requirements are not kept confidential.

The collection of information under rule 204–2 is necessary for the Commission staff to use in its examination and oversight program. This collection of information is mandatory. The respondents are investment advisers registered with us that vote proxies with respect to clients' securities. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.[37] The records that an adviser must keep in accordance with rule 204–2 must generally be retained for not less than five years.[38]

[36] 44 U.S.C. 3501 to 3520.

[37] *See* section 210(b) of the Advisers Act [15 U.S.C. 80b–10(b)].

[38] *See* rule 204–2(e) [17 CFR 275.204–2(e)].

A. Rule 206(4)–6

According to our records, 6,203 of the 7,687 total advisers registered with the Commission manage client assets on a discretionary basis.[39] For purposes of estimating the paperwork burden for investment advisers under proposed rule 206(4)–6, we will infer that these advisers vote proxies on behalf of one or more clients in connection with providing discretionary asset management services.[40] We further estimate that each of these advisers would be required to spend on average 10 hours annually documenting its proxy voting procedures under the requirements of the proposed rule, for a total burden of 62,030 hours.[41] In preparing this estimate, we have taken into account the fact that many advisers subject to ERISA because they manage plan assets already have proxy voting procedures in place which can serve as the basis of the adviser's procedures under the proposed rule.

The proposed rule also would require these advisers to describe their proxy voting policies and procedures to clients. The attendant paperwork burden is already incorporated in a collection of information titled ''Form ADV,'' which is currently approved by OMB under control number 3235–0049.[42] In addition, the proposed rule would require these investment advisers to provide copies of their proxy voting policies and procedures to clients upon request. While we estimate that SEC-registered advisers have, on average, 670

[39] Based on our records of information submitted to us by investment advisers in Part 1 of Form ADV, 6,203 SEC-registered investment advisers report that they provide continuous and regular supervisory or management services for client securities portfolios on a discretionary basis.

[40] This estimate potentially overstates the number of advisers that would be subject to the rule. Part 1 of ADV does not require investment advisers to describe whether they vote proxies on behalf of clients. Nor does Part 1 require advisers to describe whether securities managed by the adviser are voting securities as opposed to, for example, government or other debt obligations for which proxy voting issues never arise.

[41] 6,203 x 10 = 62,030.

[42] In April of 2000, we proposed amendments to Form ADV, Part 2 that would require investment advisers that vote client proxies to describe their proxy voting policies and procedures in their brochure. *Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV,* Investment Advisers Act Release No. 1862 (April 5, 2000) [65 FR 20524 (April 17, 2000)]. An adviser could satisfy the disclosure requirements under proposed rule 206(4)–6(b) and (c) by describing its policies and procedures in its brochure. *See supra* notes 27 and 30. In connection with our April 2000 proposal, when we obtained OMB approval for our amendments to the Form ADV collection that would result from the proposed changes to Part 2, we included the paperwork burden of describing any proxy voting policies and procedures in a firm's brochure.

clients each,[43] we estimate that, on average, at least 90 percent of each of these adviser's clients would find the adviser's description of its policies sufficiently informative, and ten percent at most, or 67 clients of each adviser on average, would request copies of the underlying policies and procedures.[44] We estimate that it would take these advisers 0.1 hours per client to deliver copies of the policies and procedures, for a total burden of 41,560 hours.[45]

Accordingly, we estimate that proposed rule 206(4)–6 would increase the annual aggregate burden of collection for SEC-registered investment advisers by a total of 103,590 hours.[46]

B. Rule 204–2

The currently-approved annual aggregate burden of collection under rule 204–2 is 1,582,293 hours. This approved annual aggregate burden was based on estimates that 8,100 advisers were subject to the rule, and each of these advisers spend an average of 195.34 hours each preparing and preserving records in accordance with the rule. Updating those prior calculations based on current information from SEC-registered investment advisers, however, we would now estimate that 7,687 are subject to the rule. We would continue to estimate that each of these advisers spend an average of 195.34 hours each preparing and preserving records in accordance with the rule. These current data would decrease the annual aggregate burden under the rule to 1,501,578.5 hours,[47] which is a reduction of 80,714.5 hours.[48]

The proposed amendments to rule 204–2 would require registered investment advisers that vote client proxies to maintain specified records with respect to those clients. These advisers must maintain copies of their policies and procedures that would be required under proposed rule 206(4)–6, as well as copies or records of each proxy statement received with respect to the securities of clients for whom the adviser exercises voting authorities. These advisers must also maintain a record of each vote cast, as well as a record of all communications received and all internal documents created that were material to the adviser's decision on the vote. In addition, the adviser would be required to maintain a record of each client request for proxy voting information and the adviser's response. The adviser would be required to maintain these records in the same manner, and for the same period of time, as other books and records are currently required to be maintained under rule 204–2(e)(1).

We estimate that these proposed amendments would increase the average annual collection burden of an adviser subject to the amendments by 20 hours, to 215.34 hours.[49] As discussed above in connection with proposed rule 206(4)–6, we estimate that 6,203 advisers exercise voting authority on behalf clients and will thus be subject to this additional burden, for an annual aggregate burden increase of 124,060.[50] The average annual burden for SEC-registered investment advisers under rule 204–2 would accordingly increase from 195.34 hours to 211.48 hours.[51]

C. Request for Comment

We request comment whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

- evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information;
- determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and
- determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, Washington, DC 20503, and also should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609 with reference to File No. S7–38–02. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives the comment within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–38–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, DC 20549.

V. Cost-Benefit Analysis

We are sensitive to the costs and benefits resulting from our rules. While investment advisers exercise enormous proxy voting power as part of their discretionary management of their clients' securities, the federal securities laws do not specifically address how advisers must exercise this voting authority. Proposed rule 206(4)–6 is designed to ensure that advisers vote client securities in the client's best interest and to provide clients information on how their securities are voted.

Investment advisers today have discretionary investment authority with respect to almost $19trillion of assets, including large holdings in equity securities. In most cases, these advisers are given authority to vote proxies on equity securities on behalf of their clients. Under the Advisers Act, investment advisers are fiduciaries that must act in their clients' best interest with respect to functions undertaken on behalf of their clients, including these proxy voting activities. An adviser's fiduciary duty includes the duty of care and the duty of loyalty to clients. For an

[43] *See Custody of Funds or Securities of Clients by Investment Advisers,* Investment Advisers Act Release No. 2044 (July 18, 2002) [67 FR 48579 (July 25, 2002)].

[44] 670 x 10% = 67.

[45] 0.1 x 67 x 6,203 = 41,560. In connection with submitting this collection of information to OMB, the Commission has also prepared an estimate of the aggregate annual cost to affected firms of this annual aggregate hour burden. We anticipate that investment advisers would likely use compliance professionals to document their firms' proxy voting policies and procedures. We estimate the hourly wage for compliance professionals to be $60, including benefits. We anticipate that investment advisers would likely use clerical staff to deliver copies of proxy voting policies in response to clients' requests. We estimate the hourly wage for clerical staff to be $10, including benefits. Accordingly, we estimate the annual aggregate cost of collection to be $4,137,400 ((62,030 hours x $60 per hour) + (41,560 hours x $10 per hour) = $4,137,400).

[46] 62,030 + 41,560 = 103,590.

[47] 7,687 x 195.34 = 1,501,578.5.

[48] 1,582,293 " 1,501,578.5 = 80,714.5.

[49] 195.34 + 20 = 215.34.

[50] 20 x 6,203 = 124,060. In connection with submitting this collection of information to OMB, the Commission has also prepared an estimate of the aggregate annual cost to affected firms of this annual aggregate hour burden. We anticipate that investment advisers would likely use compliance clerical staff to maintain the records required under the proposed amendments. We estimate the hourly wage for compliance clerical staff to be $13.20, including benefits. Accordingly, we estimate the annual aggregate cost of collection to be $1,637,592 (124,060 hours x $13.20 per hour = $1,637,592).

[51] (1,501,578.5 current hours +124,060 additional hours = 1,625,638.5 aggregate burden hours) / 7,687 SEC-registered investment advisers = 211.48.

adviser that has been given authority to vote proxies, the duty of care includes the duty to monitor corporate events and vote proxies; the duty of loyalty requires the adviser to vote proxies in a manner consistent with the best interest of its client and precludes the adviser from subrogating the client's interest to its own.

The Commission is concerned with conflicts of interest between advisers and their clients. Advisers (or their affiliates) frequently manage assets, administer employee benefit plans, or provide brokerage, underwriting, or insurance services to companies whose management is soliciting proxies. These business interests may expose advisers to pressure to vote in favor of management. Other business relationships may expose advisers to pressure to vote in favor of the proponent of a proxy question, such as when an adviser manages money for an employee group. In other instances, advisers may be exposed to pressure as a result of personal relationships with participants in proxy contests, corporate directors, or candidates for directorships.

The importance of proxy voting by investment advisers—both to their clients and to our system of corporate governance—as well as the many conflicts faced by advisers suggest a need for the Commission to address proxy voting by investment advisers under the Advisers Act. While many advisers have adopted policies and procedures designed to ensure that client proxies are properly voted, material conflicts are avoided, and fiduciary obligations are fulfilled, others do not have these procedures in place.

Therefore, the Commission is proposing a new rule under the Advisers Act designed to prevent material conflicts of interest from affecting the manner in which advisers vote client proxies. We have identified certain costs and benefits of the proposed rule and rule amendments. We request comment on the costs and benefits of the proposed rule amendments, and encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or any additional costs or benefits.

A. Background

Proposed rule 206(4)–6 is designed to ensure that advisers vote client securities in the client's best interest and to provide clients information on how their securities are voted. The proposed rule would require an SEC-registered investment adviser that votes client proxies to adopt written policies and procedures reasonably designed to ensure the adviser votes proxies in the best interest of the client, including procedures to address any material conflict that may arise between the interest of the adviser and the client. The proposed rule would also require the adviser to describe these policies and procedures to clients, and to provide copies of the policies and procedures to clients upon their request. In addition, the proposed rule would require these advisers to disclose to clients how they may obtain information from the adviser about how the adviser voted their proxies.

We are not proposing to specify the procedures or policies that advisers must adopt under the proposed rule. Investment advisers registered with us have such different types of conflicts and organizational structures that we believe a ''one-size-fits-all'' approach would not work. The rule would, however, require written procedures that describe how the adviser addresses material conflicts between its interests and those of its clients with respect to proxy voting, and how the adviser resolves those conflicts in the best interest of clients. The rule thus incorporates the standard that we believe applies to advisers as fiduciaries under the Advisers Act.

We are also proposing amendments to rule 204–2 under the Advisers Act that would require registered investment advisers that vote client proxies to maintain specified records with respect to those clients. These advisers would be required to maintain copies of the policies and procedures to be required under proposed rule 206(4)–6, as well as copies or records of each proxy statement received with respect to the securities of clients for whom the adviser votes proxies. These advisers must also maintain a record of each vote cast, as well as a record of all communications received and all internal documents created that were material to the adviser's decision on the vote. In addition, the adviser would be required to maintain a record of each client request for proxy voting information and the adviser's response. These records would permit our examiners to ascertain compliance with the rule. They would also be necessary for an adviser to comply with the proposed requirement to disclose how the adviser has voted proxies for clients.

Based on advisers' filings with us, we estimate that the majority of investment advisers registered with us vote proxies on behalf of their clients. SEC-registered advisers are not currently required to submit information to us describing their proxy voting practices. However, according to our records as of September 9, 2002, 6,203 of the 7,687 total advisers registered with us manage client assets on a discretionary basis.[52] Since in most instances advisers with discretionary investment authority are given authority to vote proxies relating to equity securities under management, it is likely that significant numbers of these 6,203 advisers vote proxies on behalf of one or more clients in connection with providing discretionary asset management services.[53]

B. Benefits

Advisory clients will receive benefits from the proposed amendments. The proxy voting procedures contemplated under the rule will ensure that advisers have a system in place designed to identify and address any material conflicts of interest with respect to each proxy voted by the adviser on a client's behalf, and to vote the proxy in the client's best interest. Many advisers may be exposed to varying types of conflicts from differing sources, and it benefits clients when advisers take special measures to ensure that all conflicts are properly addressed.

The proposed rule would also require these advisers to describe their proxy voting policies and procedures to clients, and require the adviser to furnish copies of the policies and procedures to clients upon request. Clients will benefit from this disclosure by gaining an understanding of how the adviser votes proxies. Clients will be in a better position to determine whether their adviser's policies and procedures meet their expectations.

In addition, the proposed rule requires advisers to disclose to their clients how they can obtain information on how the adviser voted their proxies. Fully informed clients will serve as a check on their advisers' exercise of voting authority: clients who disapprove of how advisers vote their proxies may decide to reclaim the responsibility to vote proxies, provide the adviser with instructions on how to vote their proxies, or seek a different adviser whose voting policies they approve.

These potential benefits to clients are difficult to quantify. In addition, some

[52] This estimate is based on information submitted by SEC-registered advisers in Form ADV, Part 1 [17 CFR 279.1]. 6,203 SEC-registered investment advisers reported that they provide continuous and regular supervisory or management services for client securities portfolios on a discretionary basis.

[53] Because Part 1 of Form ADV does not require advisers to describe the types of securities for which they hold discretionary investment authority, some of these advisers may only manage securities for which proxy voting issues never arise, such as government or other debt obligations.

clients may already be receiving some of these benefits in certain instances; applicable law entitles clients to their adviser's fiduciary care and loyalty in connection with proxy voting, as well as information about how their proxies were voted, and some advisory firms have adopted policies and procedures addressing proxy voting. To the extent clients are receiving these benefits as a matter of practice, the potential benefit of having these practices institutionalized through a rule is also difficult to quantify.

C. Costs

The proposed rule and rule amendments would impose some costs on advisers that vote client proxies. These advisers would incur costs in connection with establishing and operating the procedures contemplated by the proposed rule, and in connection with expanding their recordkeeping systems to include new material on proxy voting. These advisers would also incur costs in preparing descriptions of their policies and procedures for clients, as well as in responding to client requests for copies of the advisers' policies and procedures. Finally, these advisers would incur costs in responding to any client requests for information about how the adviser voted the client's proxies.

The initial and ongoing compliance costs imposed by the proposed rule would vary significantly among advisers based on several factors that are as diverse as the differing types of advisory firms and clients affected by the proposal. For example, firms that invest their clients' assets in numerous equity issues must review more proxy votes than firms that invest their clients' assets in few equity issues.[54] Firms with a wide diversity of business and individual advisory clients may be more likely to face conflicts than other firms, and firms that are part of financial organizations that provide other financial services may face more conflicts than stand-alone firms. Clients of a ''social investing'' firm may be keenly interested in the firm's proxy voting practices, but the firm is likely to have already developed systems that would largely address the proposed requirements. Clients of other firms may be interested in how the adviser votes only rarely, with regard to high-profile proxy contests, and the firm's cost of responding to client inquiries is likely to be small.

In addition, we believe that many advisers that would be affected by the proposed rule have already developed proxy voting policies and procedures, and would incur fewer new costs as a result. Investment advisers subject to ERISA because they manage retirement plan assets vote client proxies in many instances, and through our investment adviser inspection program, we have determined that this group of advisers typically has proxy voting policies and procedures in place. These advisers could likely use some, or all, of these procedures to meet the obligations under the proposed rules. Moreover, many of these advisers are the larger firms that would likely incur the most costs associated with the proposed rules.

In connection with estimating the annual aggregate burden of the proposed rule and amendments for purposes of the Paperwork Reduction Act, Commission staff has estimated that advisory firms affected by the rule will incur staff salary and benefit costs aggregating approximately $5,775,000 to prepare and maintain the documents and records required under the proposal.[55] This is an aggregate estimate, and each firm's individual costs in this regard will vary depending on the nature of the firm's advisory business and clients, as discussed above. Moreover, many firms that are subject to ERISA because they manage retirement plan assets already have proxy voting policies and procedures in place, as discussed above, and are already incurring some portion of these costs.

D. Request for Comment

- The Commission requests comment on the potential costs and benefits identified in this release, as well as any other costs or benefits that may result from the proposal.
- We encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or additional costs and benefits.

VI. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') regarding proposed rule 206(4)-6 and proposed amendments to rule 204–2 in accordance with section 3(a) of the Regulatory Flexibility Act.[56]

A. Reasons for Proposed Action

While investment advisers exercise enormous proxy voting power as part of their discretionary management of their clients' securities, the federal securities laws do not specifically address how advisers must exercise this voting authority. Investment advisers today have discretionary investment authority with respect to almost $19 trillion of assets, including large holdings in equity securities. In most cases, these advisers are given authority to vote proxies on equity securities on behalf of their clients. Under the Advisers Act, investment advisers are fiduciaries that must act in their clients' best interest with respect to functions undertaken on behalf of their clients, including these proxy voting activities. An adviser's fiduciary duty includes the duty of care and the duty of loyalty to clients. For an adviser that has been given authority to vote proxies, the duty of care includes the duty to monitor corporate events and vote proxies; the duty of loyalty requires the adviser to vote proxies in a manner consistent with the best interest of its client and precludes the adviser from subrogating the client's interest to its own.

The Commission is concerned with conflicts of interest between advisers and their clients. Advisers (or their affiliates) frequently manage assets, administer employee benefit plans, or provide brokerage, underwriting, or insurance services to companies whose management is soliciting proxies. These business interests may expose advisers to pressure to vote in favor of management. Other business relationships may expose advisers to pressure to vote in favor of the proponent of a proxy question, such as when an adviser manages money for an employee group. In other instances, advisers may be exposed to pressure as a result of personal relationships with participants in proxy contests, corporate

[54] For example, the firm is a fixed income manager, which does not manage voting equity securities, or the firm does not manage significant client assets.

[55] As discussed *supra* note 45, we anticipate that investment advisers would likely use compliance professionals to document their firms' proxy voting policies and procedures, for an aggregate annual average of 62,030 hours at an average wage and benefit cost of $60 per hour, for an aggregate cost of $3,721,800. We anticipate that investment advisers would likely use clerical staff to deliver copies of proxy voting policies in response to clients' requests, for an aggregate annual average of 41,560 hours at an average wage and benefit cost of $10 per hour, for an aggregate cost of $415,600. As discussed *supra* note 50, we anticipate that investment advisers would likely use compliance clerical staff to maintain the records required under the proposed amendments, for an aggregate annual average of 124,060 hours at an average wage and benefit cost of $13.20 per hour, for an aggregate cost of $1,637,592. $3,721,800 + $415,600 + $1,637,592 = $5,774,992. For these estimates, we used wage and benefit rates published by the Securities Industry Association. *See* Securities Industry Association, *Report on Management and Professional Earnings in the Securities Industry 2001* (Oct. 2001); *Report on Office Salaries in the Securities Industry* (Oct. 2001).

[56] 5 U.S.C. 603(a).

directors, or candidates for directorships.

The importance of proxy voting by investment advisers—both to their clients and to our system of corporate governance—as well as the many conflicts faced by advisers suggest a need for the Commission to address proxy voting by investment advisers under the Advisers Act. While many advisers have adopted policies and procedures designed to ensure that client proxies are properly voted, material conflicts are avoided, and fiduciary obligations are fulfilled, others do not have these procedures in place. Therefore, the Commission is proposing a new rule under the Advisers Act designed to prevent material conflicts of interest from affecting the manner in which advisers vote client proxies.

B. Objectives and Legal Basis

Proposed rule 206(4)–6 is designed to ensure that advisers vote client securities in the client's best interest and to provide clients information on how their securities are voted. The proposed rule would require an investment adviser that votes client proxies to adopt written policies and procedures reasonably designed to ensure the adviser votes proxies in the best interest of the client, including procedures to address any material conflict that may arise between the interest of the adviser and the client. The proposed rule would also require the adviser to disclose to clients information about those procedures and policies and how clients may obtain information on how the adviser has voted their proxies. The Commission is also proposing amendments to rule 204–2 to require advisers that vote client proxies to keep certain records regarding the proxy votes.

The proposed rule and amendments will serve three main objectives. First, the written policies and procedures required under proposed rule 206(4)–6 are designed to ensure that an adviser voting proxies on behalf of its client fulfills its fiduciary duties, including its duty to address any material conflict between the adviser's interests and those of its client. Second, the disclosures required under proposed rule 206(4)–6 are designed to provide clients with a greater understanding of their adviser's proxy voting practices, permit clients to determine whether their adviser's policies and procedures meet their expectations, and serve as a check on their advisers' exercise of voting authority if they disapprove of votes cast on their behalf. Third, the amendments to rule 204–2 will clarify the recordkeeping obligations an adviser has with respect to voting client securities and provide our examiners a means to assess compliance with proposed rule 206(4)–6.

The Commission is proposing rule 206(4)–6 pursuant to the authority set forth in sections 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–6(4) and 80b–11(a)] and amendments to rule 204–2 pursuant to the authority set forth in sections 204 and 206(4) of the Advisers Act [15 U.S.C. 80b–4 and 80b–6(4)]. Section 206(4) gives us authority to issue rules designed to prevent fraudulent, deceptive, or manipulative acts or practices. Section 211 gives us authority to clarify, by rule, persons and matters within our jurisdiction and to prescribe different requirements for different classes of persons, as necessary or appropriate to the exercise of our authority under the Act. Section 204 gives us authority, by rule, to require an investment adviser to make and keep records.

C. Small Entities Subject to Rule

Under Commission rules, for the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had $5 million or more on the last day of its most recent fiscal year.[57] The Commission estimates that as of September 9, 2002 approximately 138 SEC-registered investment advisers that might potentially be affected by the rule were small entities.[58]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rule and rule amendments would impose no new reporting requirements. The proposed rule and rule amendments would create certain new compliance and recordkeeping requirements. The proposed rule imposes a new compliance requirement by making it unlawful for an SEC-registered investment adviser to vote proxies on behalf of clients unless the adviser has adopted written policies and procedures on proxy voting. The proposed rule amendments impose new recordkeeping requirements by requiring these advisers to maintain certain records regarding proxy voting.

Small advisers would only expend efforts to meet these new compliance and recordkeeping requirements to the extent these advisers have authority to vote proxies on behalf of their clients. Advisers typically vote client proxies in connection with managing client assets on a discretionary basis, and small advisers engage in discretionary asset management on a limited scale. Therefore, it is likely that these advisers will make relatively few proxy votes on behalf of their clients, and will not have to dedicate significant resources to comply with the compliance and recordkeeping amendments in connection with those votes.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate or conflict with the proposed rule. Proposed rule 206(4)–6 overlaps with certain provisions of ERISA.[59] Pursuant to the Department of Labor's interpretation of sections 402, 403, and 404 of ERISA, an investment manager that has delegated authority to manage plan assets has a fiduciary obligation to vote proxies that affect the value of plan investments unless the investment management contract expressly precludes the manager from voting proxies.[60] The interpretation also states that the investment manager is required to maintain records as to proxy voting.[61] The provisions of ERISA do not apply to all investment advisers registered with us, but do apply to those investment advisers that meet the ERISA definition of investment

[57] 17 CFR 275.0–7(a).

[58] This estimate is based on the information submitted by SEC-registered advisers in Part 1 of Form ADV. Advisers are not required to describe on Part 1 whether they vote proxies on behalf of their clients. These 138 small advisers report on their Part 1 that they provide continuous and regular supervisory or management services for client securities portfolios on a discretionary basis. For purposes of estimating the number of small advisers that might vote client proxies and thus be subject to the proposal, we will infer that these 138 advisers vote proxies on behalf of one or more clients in connection with providing discretionary asset management services. This estimate potentially overstates the number of small advisers that would actually be subject to the rule. For example, the assets under discretionary management at some of these firms may consist of government or other debt obligations for which proxy voting issues never arise.

[59] 29 U.S.C. 1001, *et. seq.*

[60] Dept. of Labor, Interpretive Bulletin Relating to Written Statements of Investment Policy, Including Proxy Voting Guidelines, 29 CFR 2509.94–2 (2001).

[61] *Id.*

manager.[62] We do not believe our proposed rule and rule amendments conflict with the obligations that an investment adviser may have under ERISA.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any adverse impact on small entities. In connection with the proposed rule, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for such small entities.

The Commission has drafted proposed rule 206(4)–6 to permit each firm subject to the rule to design and structure its own policies and procedures in light of the firm's operational structure and the particular types of conflicts encountered by the firm in connection with its unique business and clients. In the same way, the proposed amendments to rule 204–2 would permit each firm to develop its own system for capturing and retaining the requisite information. In connection with considering whether to establish differing compliance or recordkeeping requirements or timetables for small entities, as well as whether to use performance rather than design standards, the Commission believes at this time that the flexibility already built in to the proposal adequately addresses these alternatives.

In considering whether to attempt to clarify, consolidate, or simplify the compliance and recordkeeping requirements under the rule for small entities, the Commission believes at this time that the proposal achieves the appropriate balance between simplicity and investor protection, and any further simplification would unacceptably compromise such protection. The minimum criteria specified for proxy voting procedures and client disclosures under proposed rule 206(4)–6 are designed to ensure advisers vote proxies in the best interest of their clients and provide clients information about how their securities are voted. Elimination of some or all of these criteria would potentially impede achievement of that objective. Similarly, in establishing the categories of records to be retained under the proposed amendments to rule 204–2, the records described by the rule are all necessary if the Commission is to be able to evaluate advisers' compliance with proposed rule 206(4)–6 as part of the Commission's inspection program.

Finally, the Commission believes that it would be inconsistent with the purposes of the Advisers Act to exempt small entities from the proposed rule and rule amendments. The proposed policies and procedures are designed to ensure clients are afforded the full protections attendant to an adviser's fiduciary duties as recognized by the Adviser's Act when an adviser is voting their proxies. The proposed disclosure requirements would provide advisory clients with information about its adviser's proxy voting policies and procedures and instruct clients how to obtain information on how the adviser voted their proxies. Different disclosure requirements would leave some advisory clients without the requisite information necessary to assess their adviser's proxy voting practices. Since the protections of the Advisers Act are intended to apply equally to clients of both large and small advisory firms, it would be inconsistent with the purposes of the Act to specify different requirements for small entities.

G. Solicitation of Comment

We encourage written comments on matters discussed in the IRFA. In particular the Commission seeks comment on:

- The number of small entities that would be affected by the proposed rule and rule amendments; and
- Whether the effects of the proposed rule and rule amendments on small entities would be economically significant.

Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of the effect.

VII. Statutory Authority

We are proposing new rule 206(4)–6 pursuant to our authority set forth in sections 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–6(4) and 80b–11(a)].

We are proposing amendments to rule 204–2 pursuant to our authority set forth in sections 204 and 206(4) of the Advisers Act [15 U.S.C. 80b–4 and 80b–6(4)].

List of Subjects in 17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

2. Section 275.204–2 is amended by:

a. Redesignating paragraph (c) introductory text, paragraphs (c)(1) and (c)(2) as paragraph (c)(1) introductory text, paragraphs (c)(1)(i) and (c)(1)(ii) respectively;

b. Adding new paragraph (c)(2); and

c. Revising paragraph (e)(1).

The additions and revisions read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

* * * * *

(c) * * *

(2) Every investment adviser subject to paragraph (a) of this section that exercises voting authority with respect to client securities shall, with respect to those clients, make and retain the following:

(i) All policies and procedures required by § 275.206(4)–6.

(ii) A copy of each proxy statement that you receive regarding client securities.

(iii) A record of each vote cast by the investment adviser on behalf of a client.

(iv) A record of all oral and a copy of all written communications received and memoranda or similar documents created by the investment adviser that were material to making a decision on voting client securities.

(v) A record of each client request for proxy voting information and the investment adviser's response, including the date of the request, the name of the client, and date of the response.

* * * * *

(e)(1) All books and records required to be made under the provisions of paragraphs (a) to (c)(1)(i), inclusive, and (c)(2) of this section (except for books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this section), shall be maintained and preserved in an easily

[62] An investment manager under ERISA is any plan fiduciary, other than a trustee or named fiduciary, who has the power to manage plan assets, has acknowledged its fiduciary status, and is either an investment adviser (registered with the SEC or the states), bank, or insurance company. Section 3(38) of ERISA [29 U.S.C. 1002(38)].

accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

* * * * *

3. Section 275.206(4)–6 is added to read as follows:

§ 275.206(4)–6 Proxy voting.

If you are an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3), it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)), for you to exercise voting authority with respect to client securities, unless you:

(a) Adopt and implement written policies and procedures that are reasonably designed to ensure that you vote client securities in the best interest of clients, which procedures must include how you address material conflicts that may arise between your interests and those of your clients;

(b) Disclose to clients how they may obtain information from you about how you voted with respect to their securities; and

(c) Describe to clients your proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting client.

By the Commission.

Dated: September 20, 2002.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–24410 Filed 9–25–02; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 3287/P.L. 107–225

To redesignate the facility of the United States Postal Service located at 900 Brentwood Road, NE, in Washington, D.C., as the ''Joseph Curseen, Jr. and Thomas Morris, Jr. Processing and Distribution Center''. (Sept. 24, 2002; 116 Stat. 1344)

H.R. 3917/P.L. 107–226

Flight 93 National Memorial Act (Sept. 24, 2002; 116 Stat. 1345)

H.R. 5207/P.L. 107–227

To designate the facility of the United States Postal Service located at 6101 West Old Shakopee Road in Bloomington, Minnesota, as the ''Thomas E. Burnett, Jr. Post Office Building''. (Sept. 24, 2002; 116 Stat. 1349)

Last List September 24, 2002

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