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Federal Register

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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.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02-096-1]

Oriental Fruit Fly; Designation of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by quarantining a portion of Los Angeles and San Bernardino Counties, CA, and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Oriental fruit fly into noninfested areas of the United States.

DATES: This interim rule was effective October 2, 2002. We will consider all comments that we receive on or before December 9, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-096-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-096-1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-096-1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in

room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-8039.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, vegetables, and berries. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93-10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. Section 301.93-3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Oriental fruit fly has been found. The regulations impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.93-3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement

of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles and (2) the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service reveal that a portion of Los Angeles and San Bernardino Counties, CA, is infested with the Oriental fruit fly. The Oriental fruit fly is not known to exist anywhere else in the continental United States.

State agencies in California have begun an intensive Oriental fruit fly eradication program in the quarantined area in Los Angeles and San Bernardino Counties. Also, California has taken action to restrict the interstate movement of regulated articles from the quarantined area.

Accordingly, to prevent the spread of the Oriental fruit fly into other States, we are amending the regulations in § 301.93-3 by designating a portion of Los Angeles and San Bernardino Counties, CA, as a quarantined area for the Oriental fruit fly. The quarantined area is described in the rule portion of this document.

Emergency Action

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

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

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget

has waived its review under Executive Order 12866.

This rule amends the Oriental fruit fly regulations by adding a portion of Los Angeles and San Bernardino Counties, CA, to the list of quarantined areas. The regulations restrict the interstate movement of regulated articles from a quarantined area.

County records indicate there are approximately 1,500 acres of wine grapes, 200 acres of lemons and oranges, 50 acres of miscellaneous fruit, 20 garden centers, and 26 chain stores with nursery licenses within the quarantined area that may be affected by this rule. In addition, there are 13 production nurseries in the ZIP Code, although some may not be within the quarantined area.

We expect that any small entities located within the quarantined area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears to be minimal. The effect on any small entities that may move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

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

Executive Order 12988

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

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The site-specific environmental assessment provides a basis for the conclusion that the implementation of integrated pest management to eradicate the Oriental

fruit fly will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice). In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**. The environmental assessment and finding of no significant impact may also be viewed on the Internet at <http://www.aphis.usda.gov/ppd/es/ppq/offrc.pdf>.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

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

2. In § 301.93–3, paragraph (c) is revised to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas:

CALIFORNIA

Los Angeles and San Bernardino Counties. That portion of Los Angeles and San Bernardino Counties in the Rancho Cucamonga area bounded by a line as follows: Beginning at the intersection of North Mills Avenue and Mount Baldy Road; then northeast and north along Mount Baldy Road to its intersection with Barrett Road; then east from the intersection of Mount Baldy Road and Barrett Road along an imaginary line to the Joe Elliot Tree Memorial; then southeast from the Joe Elliot Tree Memorial along an imaginary line to the north end of Etiwanda Avenue; then southeast and south along Etiwanda Avenue to State Highway 30; then west along State Highway 30 to Rochester Avenue; then south along Rochester Avenue to Baseline Road; then west along Baseline Road to Milliken Avenue; then south along Milliken Avenue to State Highway 66; then west along State Highway 66 to Haven Avenue; then south along Haven Avenue to 8th Street; then west along 8th Street to East 8th Street; then west along East 8th Street to West 8th Street; then west along West 8th Street to Central Avenue; then north along Central Avenue to State Highway 66; then west along State Highway 66 to North Mills Avenue; then north along North Mills Avenue to the point of beginning.

Done in Washington, DC, this 2nd day of October 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–25537 Filed 10–7–02; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 63

RIN 3150–AG91

Specification of a Probability for Unlikely Features, Events and Processes

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) is amending its regulations governing the disposal of high-level radioactive wastes in a

potential geologic repository at Yucca Mountain, Nevada, to define the term “unlikely” in quantitative terms. NRC regulations now specify a range of numerical values for use in determining whether a feature, event or process, or a sequence of events and processes, should be excluded from certain required assessments. NRC is taking this action to clarify how it plans to implement two of the environmental standards for Yucca Mountain issued by the U.S. Environmental Protection Agency (EPA). Specifically, EPA’s standards require the exclusion of “unlikely” features, events or processes, or sequences of events and processes, from the required assessments for the human-intrusion and ground-water protection standards. In accordance with the Energy Policy Act of 1992, NRC has adopted EPA’s standards in its recently published technical requirements for a potential geologic repository at Yucca Mountain.

EFFECTIVE DATE: November 7, 2002.

ADDRESSES: The final rule and any related documents are available on NRC’s rulemaking Web site at <http://ruleforum.llnl.gov>. For information about the interactive rulemaking Web site, contact Carol Gallagher (301) 415-5905; e-mail cag@nrc.gov.

The documents may also be examined at the NRC Public Document Room (PDR), Room O-1F23, 11555 Rockville Pike, Rockville, MD.

NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC’s public documents. These documents may be accessed through 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 PDR Reference staff at 1-800-397-4209, or 301-415-4737; or by e-mail to: pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Timothy McCartin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-7285, e-mail: tjm3@nrc.gov; or Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6203, e-mail: cwp@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2001 (66 FR 55732), NRC published a final rule, 10 CFR part 63, governing disposal of high-level

radioactive wastes in a potential geologic repository at Yucca Mountain, Nevada. We are now finalizing one particular matter that specifies a probability for unlikely features, events, and processes (FEPs). These are the regulations that the U.S. Department of Energy (DOE) must meet in any license application for construction and operation of a potential repository. As mandated by the Energy Policy Act of 1992, Pub. L. 102-486, NRC’s rule adopts the radiation protection standards established by EPA in 40 CFR Part 197 (66 FR 32074; June 13, 2001). EPA’s standards for disposal include an individual-protection standard (40 CFR 197.20); a human-intrusion standard (40 CFR 197.25); and ground-water protection standards (40 CFR 197.30). These EPA standards have been incorporated into NRC’s regulations at 10 CFR 63.311, 63.321, and 63.331, respectively.

DOE’s performance assessments are required to consider the naturally occurring features, events, and processes that could affect the performance of a geologic repository (*i.e.*, specific conditions or attributes of the geologic setting; degradation, deterioration, or alteration processes of engineered barriers; and interactions between natural and engineered barriers). EPA’s standards include limits on what DOE must consider in performance assessments undertaken to determine whether the repository will perform in compliance with the standards (40 CFR 197.36). EPA’s standards state that DOE’s performance assessments shall not include consideration of “very unlikely” FEPs, which EPA defines to be those FEPs that are estimated to have less than one chance in 10,000 of occurring within 10,000 years of disposal. In addition, EPA’s standards require NRC to exclude “unlikely” FEPs, or sequences of events and processes, from the required assessments for demonstrating compliance with the human-intrusion and ground-water protection standards. EPA did not define unlikely FEPs in its standards, but, rather, left the specific probability of the unlikely FEPs for NRC to define. The Commission explained in its rulemaking establishing part 63 that it “* * * fully supports excluding unlikely FEPs from analyses for estimating compliance with the standards for human intrusion and ground-water protection * * *,” and that it “* * * plan[ne]d to conduct an expedited rulemaking to quantitatively define the term ‘unlikely’” (66 FR 55734; November 2, 2001).

NRC published a proposed rule, “10 CFR Part 63: Specification of a

Probability for Unlikely Features, Events, and Processes,” on January 25, 2002 (67 FR 3628), and requested public comments. That proposed rule defined the term “unlikely” in quantitative terms. This action was taken to allow NRC to implement EPA’s final standards for a potential repository at Yucca Mountain, Nevada. The Commission was careful to point out that its specification for unlikely events was in the context of very specific assessments (*i.e.*, those made to assess compliance with ground-water protection and human-intrusion standards) over a long time frame, and this specification was not intended to suggest or imply precedent for other significantly different applications that used the term “unlikely”.

Unlike the broader purposes served by the performance assessment for the all-pathway individual-protection standard, the performance assessments used to determine compliance with the human-intrusion standard and the ground-water protection standards serve narrow, focused objectives. In the case of the performance assessment for human intrusion, the purpose is to evaluate the robustness of the repository system, assuming the occurrence of a prescribed human-intrusion scenario. In the case of the performance assessment for ground-water protection, the purpose is to evaluate potential degradation of the ground-water resource. Although EPA’s final standards did not specify a numerical value to define unlikely FEPs in quantitative terms, the preamble to the standards stated that the exclusion of unlikely FEPs is intended to focus these assessments on the “expected” or “likely” performance of the repository.¹

From a probabilistic perspective, any FEP with an annual probability of 10^{-4} or higher would have a high probability of occurring within the 10,000 year compliance period.² As the Commission

¹ For example, the preamble states: (1) “[T]he assessment of resource pollution potential is based upon the engineering design of the repository being sufficiently robust under expected conditions to prevent unacceptable degradation of the ground-water resource over time” (66 FR 32114; June 13, 2001); and (2) the term “undisturbed,” which is used in connection with demonstrating compliance with the ground-water protection standards, means the “* * * disposal system is not disturbed by human intrusion but that other processes or events that are likely to occur could disturb the system” (66 FR 32104; June 13, 2001).

² Estimating a high probability of occurrence for an FEP creates an expectation that an FEP will occur; however, it does not guarantee such an occurrence. There is a chance that even high-probability FEPs will not occur. Likewise, in a probabilistic sense, having a low probability of occurrence does not mean that an FEP will not occur.

described in the proposed rule, likely FEPs should include not only FEPs very likely to occur, but also those reasonably likely to occur. Given uncertainties in estimating the occurrence of FEPs over a 10,000 year time period, the Commission believed a prudent decision was to consider FEPs with 10 percent or greater chance of occurring within the 10,000 year compliance period as likely FEPs. Thus, the Commission sought public comment on its proposal that unlikely FEPs be defined as those FEPs with less than a 10 percent chance, but greater than or equal to a 0.01 percent chance, of occurring within the 10,000 year compliance period (*i.e.*, annual probability less than 10^{-5} , but greater than or equal to 10^{-8} , which is the upper boundary for very unlikely events). As mentioned previously, the focus of the performance assessments for human intrusion and ground-water protection is to be on expected conditions. The Commission believes an upper bound for unlikely FEPs of a 10 percent chance of occurring within the compliance period will focus the assessments for ground-water protection and human intrusion on the likely performance of the repository.

II. Public Comments and Responses

The 75-day comment period for the proposed rule closed on April 10, 2002. Comments were received from the following five organizations: EPA; State of Nevada and the Nevada Agency for Nuclear Projects; DOE; Nuclear Energy Institute (NEI); and Exelon Generation. Commenters differed on the quantitative values NRC should use for defining unlikely FEPs. Although some commenters supported the proposed values, others provided different numbers and associated rationales. In preparing the final rule, the NRC staff carefully reviewed and considered these comments. The commenters that suggested alternative values did not provide a convincing basis for rejecting NRC's proposed range and adopting a different range; therefore, the Commission has decided to finalize the rule as originally proposed. The NRC's consideration of each of the comments is provided below.

1. EPA Comments

Comment 1.1: The upper value for the probability range for unlikely FEPs should be an annual probability of 10^{-6} . An annual probability of 10^{-6} as a demarcation separating likely FEPs from unlikely FEPs is reasonable because it is the middle of the range between FEPs that are nearly certain to occur (*i.e.*, annual probability of 10^{-4}), and FEPs

that are very unlikely to occur (*i.e.*, annual probability of 10^{-8}). Placing the demarcation closer to either end of the range could be perceived as biased, either too liberal or too conservative, whereas the middle of the range avoids those implications. The NRC proposal, which is a factor of 10 reduction (from the 10^{-4} annual probability level), could be perceived as an arbitrary selection, whereas an annual probability of 10^{-6} is a factor of 100 reduction and is likely to be more widely accepted.

Response 1.1: The Commission stated in the proposed rulemaking (67 FR 3629; January 25, 2002) that the specification of a value to quantitatively define the probability for unlikely FEPs is complicated because of the subjective nature of the term "unlikely." The Commission did consider the merits of using an annual probability of 10^{-6} rather than 10^{-5} for the demarcation between likely and unlikely FEPs. These two probability values represent approximately a 1 percent and 10 percent chance of occurring over the 10,000 year regulatory period. The Commission considered a 1 percent chance of occurring (*i.e.*, annual probability of 10^{-6} over 10,000 years) neither expected nor likely and, therefore, an inappropriate value for the demarcation between likely and unlikely FEPs (67 FR 3630; January 25, 2002). The Commission continues to believe an annual probability of 1×10^{-5} (*i.e.*, 10 percent chance of occurring within the 10,000 year compliance period) is a protective and prudent value for defining the upper limit of unlikely FEPs and is retaining the proposed range for defining unlikely FEPs.

EPA has suggested that a probability value which represents the middle of a particular range (only when displayed on a logarithmic scale) contains some inherent justification for its selection. EPA also suggests that the NRC proposal, which is a factor of 10 less than an annual probability of 10^{-4} , may be considered too high by some, whereas the EPA recommended value of 10^{-6} , which is 100 times lower than 10^{-4} , is likely to be more acceptable. The issue is not whether a particular value lies within the middle of a range (when plotted in a particular manner), or that the value is 10 rather than 100 times less than another value. The issue for NRC is to determine an appropriate value that is protective of public health and safety and the environment, and consistent with EPA's standards. EPA's standards exclude unlikely FEPs from the required assessments for ground-water protection and human intrusion so that these assessments may focus on

the likely performance of the repository. This is the context in which the definition of a specific probability value should be viewed. The Commission and other commenters consider the NRC proposal (*i.e.*, 10 percent chance of occurring over 10,000 years defines demarcation between likely and unlikely FEPs) consistent with the intended focus of the assessments for ground-water protection and human intrusion, and protective of public health and safety and the environment (see Comments 3–5).

Comment 1.2: Given the significant uncertainty in estimating the probability for rare events (*e.g.*, events with an annual probability of 10^{-5}), specification of an annual probability value of 10^{-6} for the demarcation between likely and unlikely FEPs will provide greater confidence that all likely FEPs are considered in the assessments for ground-water protection and human intrusion. There is no need to be restrictive about the probability limits because both standards and regulations allow for excluding FEPs that have no significant impact on performance results. Use of an annual probability of 10^{-6} assures a reasonably conservative approach is taken for screening FEPs.

Response 1.2: EPA has suggested that the Commission adopt a more conservative approach for selecting the demarcation between likely and unlikely FEPs. The Commission disagrees with this approach advocated by EPA for the following reasons: (1) The proposed value of 10^{-5} (*i.e.*, 10 percent chance of occurrence over 10,000 years) already represents a reasonably conservative value for the demarcation between likely and unlikely FEPs; (2) introducing additional conservatism for screening of FEPs, by selecting an annual probability of 10^{-6} , will detract from the intended purpose of the assessments to focus on likely performance; and (3) understanding and addressing uncertainties in the quantitative estimates for the probabilities of FEPs is preferred over selection of more conservative screening values.

The Commission acknowledges that selection of a more conservative value (*i.e.*, annual probability of 10^{-6}) for the demarcation between likely and unlikely FEPs could provide additional assurance by considering a broader range of FEPs. Such an approach, however, would not be consistent with the intent that the required assessments focus on likely behavior. EPA, in

describing what level of expectation will meet the standards, has pointed out negative aspects of an overly conservative approach (e.g., conservatism can bias analyses and deflect attention from questions critical to developing an adequate understanding of the FEPs) (66 FR 32102; June 13, 2001). The Commission understands that EPA believes its recommendation (i.e., annual probability of 10^{-6}) is “reasonably” conservative. However, the Commission views EPA’s recommendation, which would identify FEPs with as little as a one-in-a-million chance of occurring in a year (i.e., one percent chance of occurring over 10,000 years) as likely FEPs, as overly conservative and thus not appropriate. The Commission, as well as other commenters (see Comments 4 and 5), support the annual probability of 10^{-5} (i.e., 10 percent chance of occurrence over 10,000 years) as a reasonably conservative value for the demarcation between likely and unlikely FEPs. The Commission continues to believe the specification of an annual probability of 10^{-5} is consistent with the focus on likely performance for the assessments of ground-water protection and human intrusion.

There will be uncertainty in estimating performance of any geologic repository, including the uncertainty in estimating the probabilities of FEPs. NRC’s regulation for Yucca Mountain contains specific requirements for addressing uncertainty in estimating performance, which includes uncertainty for estimating probabilities for FEPs. The Commission believes it is prudent to understand and evaluate the uncertainty in the probability estimates rather than set a more conservative screening value as a means to address uncertainty in estimating probabilities of FEPs. Reasonable expectation, as specified in EPA standards (40 CFR 197.14) and NRC regulations (10 CFR 63.304), in compliance with the postclosure standards of the repository, dictates that uncertainties be understood and evaluated even when they may be difficult to precisely quantify (e.g., accounting for the inherently greater uncertainties, in making long-term projections of the performance of the Yucca Mountain disposal system, does not exclude important parameters from assessments and analyses simply because they are difficult to precisely quantify to a high degree of confidence). In the preamble to the final standards, EPA asserted that “[T]he reasonable expectation approach is aimed simply at focusing attention on

understanding the uncertainties in projecting disposal system performance so that regulatory decision making will be done with a full understanding of the uncertainties involved” (66 FR 32102; June 13, 2001). The Commission believes its requirements for the performance assessments provide for a thorough evaluation and understanding of uncertainties in estimating repository performance. Thus, selection of a more conservative probability value for the demarcation between likely and unlikely FEPs is unnecessary. As discussed previously, the Commission continues to believe the proposed value (i.e., 10 percent chance of occurring within 10,000 years) ensures the assessments for ground-water protection and human intrusion focus, as intended, on likely performance, whereas the use of more conservative values to define unlikely FEPs would inappropriately distort the estimation of likely performance.

Comment 1.3: Variation in dose assessments for Yucca Mountain is sufficiently broad (e.g., two orders of magnitude—a factor of one-hundred) that it is reasonable to adopt an annual probability value of 10^{-6} as the demarcation between likely and unlikely FEPs because this value represents a numerically similar difference (i.e., two orders of magnitude) between it and the probability for events nearly certain to occur within the 10,000 year period (i.e., an annual probability value of 10^{-4}). Whereas NRC’s proposed value (i.e., an annual probability value of 10^{-5}) is only a factor of 10 (i.e., one order of magnitude) different from the probability for events nearly certain to occur.

Response 1.3: The performance assessments for evaluating individual protection for the proposed repository at Yucca Mountain evaluate performance probabilistically; therefore, the estimates of repository performance are represented by a range of values. The variation in repository performance results from including uncertainty and variability in the models and parameters of the performance assessment used to represent FEPs associated with the site conditions and the natural and engineered barriers of the repository. EPA’s observation that the variation in estimates of repository performance and the difference between the EPA recommendation of an annual probability value of 10^{-6} and the probability of FEPs nearly certain to occur within the 10,000 year period (i.e., an annual probability value of 10^{-4}) are both two orders of magnitude does not justify EPA’s recommendation,

nor does it imply that NRC’s proposed value of 10^{-5} is inappropriate. EPA has not provided information to support the relevance of this observation to the specification of a value for the demarcation of likely and unlikely FEPs. The performance assessments for Yucca Mountain involve complex models, for FEPs, that consider the uncertainty and variability in natural processes and the degradation of engineered materials. Performance assessments are expected to continue to evolve over time as new information is collected and evaluated and the variation in performance assessment results is also expected to change. A logical conclusion of the EPA comment is that the demarcation between likely and unlikely FEPs should change if future assessments of Yucca Mountain cause the variation of results to deviate from the current two orders of magnitude range. The Commission believes the determination of an annual probability for the demarcation between likely and unlikely FEPs should not be tied to the performance assessment results nor any other particular assessment of site conditions (see also response to Comment 1.4).

Comment 1.4: The selection of the probability for the demarcation between likely and unlikely FEPs should be divorced from the site conditions.

Response 1.4: The Commission agrees that site conditions should not be used to determine the probability for the demarcation between likely and unlikely FEPs. NRC’s proposed rulemaking did not use any site conditions to determine an appropriate probability value. In the proposed rule, the Commission did identify a few selected FEPs, as a matter of reference, to inform the public of the kinds of FEPs that might be included and excluded by the proposed probability range for unlikely FEPs (67 FR 3630; January 25, 2002).

2. State of Nevada and the Nevada Agency for Nuclear Projects Comments

Comment 2.1: Unlikely FEPs should be defined by the same quantitative value used to define very unlikely FEPs (i.e., annual probability less than 10^{-8}). The EPA standard requires the Commission to set the quantitative level for unlikely FEPs, but it does not require that it be higher than the value used to define very unlikely FEPs.

Response 2.1: The EPA standards provide that a numerical value to define unlikely FEPs is to be specified by NRC, and the preamble to the standards clearly indicates that any such value would be higher than the value used to define very unlikely events. More

specifically, the preamble to the final standards states: “[W]e intended to establish another demarcation for excluding unlikely features, events, and processes with a higher probability. * * *” (66 FR 32100; June 13, 2002).

The Commission does not consider the State’s proposal (*i.e.*, unlikely FEPs be specified with the same numerical value used to define very unlikely FEPs) consistent with EPA’s intent for the standards or common understanding of the two terms “unlikely” and “very unlikely,” which imply a difference in likelihood. The Commission believes its proposal, which specified a numerical range for unlikely FEPs above the range for very unlikely FEPs, is consistent with the EPA standards, as required by statute, and is fully protective of public health and safety and the environment.

Comment 2.2: Preservation of ground-water quality must not be compromised. Therefore, the assessment for protection of ground water should be no less rigorous than the assessment used to evaluate individual protection, which is required to consider unlikely events.

Response 2.2: The State is correct in pointing out that the individual protection assessment is the only assessment that includes unlikely FEPs; however, the EPA standards are clear that “unlikely” FEPs are to be excluded from the performance assessments for ground-water protection and human intrusion (40 CFR 197.36). The State of Nevada’s recommendation is not consistent with EPA’s standards that specify different assessments for determining compliance with the ground-water protection and individual-protection standards. EPA’s intent for the assessments for ground-water protection and human intrusion is to focus on the *likely* performance of the repository; thus, unlikely events are to be excluded from these two assessments (*see* Response 1.2). Unlikely FEPs should not be included in the assessments for ground-water protection and human intrusion, because inclusion would inappropriately emphasize the contribution of these less likely FEPs when determining the likely behavior of the repository. Exclusion of low-probability FEPs ensures that the assessments for ground-water protection and human intrusion are as intended (*i.e.*, on likely repository performance).

Ground water is an important resource, and potential contamination of ground water is evaluated in all three assessments (*i.e.*, ground-water protection, human intrusion, and individual protection) required by regulations and standards. More specifically, the assessment for ground-water protection must demonstrate

compliance with stringent safety standards [*e.g.*, 0.04 millisievert/year (mSv/yr) (4 millirem/year (mrem/yr))] for the potential contamination of drinking water. The assessment for individual protection must demonstrate compliance with a 0.15 mSv/yr (15 mrem/yr) exposure limit from *all* potential exposure pathways (*e.g.*, drinking contaminated water, consuming crops that are assumed to be irrigated with contaminated water, consuming animal products that are assumed to be raised with contaminated water and feed) and include unlikely FEPs. The assessment for human intrusion must demonstrate compliance with a 0.15 mSv/yr (15 mrem/yr) exposure limit from *all* potential exposure pathways, and assume that a human intrusion results in a borehole that provides a direct pathway for water to transport waste to the water table (*i.e.*, the ground-water resource). The Commission considers the multiple and overlapping assessments for ground-water protection, individual protection, and human intrusion, and the associated standards, to provide a comprehensive evaluation of potential ground-water contamination that is protective of the ground-water resource. Requiring the assessments for ground-water protection and human intrusion to include “unlikely” FEPs is not necessary for protection of the ground-water resource nor consistent with the EPA standards.

Comment 2.3: NRC’s proposed value for unlikely events would, but should not, allow the exclusion of igneous activity from consideration in the performance assessments for ground-water protection and human intrusion because it could be the largest contributor to dose. The proposed definition for unlikely events is subjective to the extreme because the largest risk contributor is excluded.

Response 2.3: The State’s recommendation that igneous activity be included because, as currently assessed, igneous activity is the largest contributor to risk, is not consistent with EPA’s standards. EPA’s standards specify that NRC is to determine FEPs are either “unlikely” or “very unlikely,” based on the likelihood of occurrence of the FEPs and not on other considerations, such as risk. The Commission explained, in its proposed rule (67 FR 3629; January 25, 2002), that EPA’s intent for the assessments for ground-water protection and human intrusion was to focus on the *likely* performance of the repository; thus, unlikely events are to be excluded from these two assessments. Unlikely FEPs should not be included in the

assessments for ground-water protection and human intrusion because inclusion would inappropriately emphasize the contribution of these less likely FEPs when determining the likely behavior of the repository. Exclusion of such low-probability FEPs ensures that the assessments for ground-water protection and human intrusion are as intended (*i.e.*, on likely repository performance), and are not considered “subjective to the extreme,” because of this exclusion.

Exclusion of igneous activity in the assessments for ground-water protection and human intrusion is not expected to have a significant effect on either assessment. The assessment for ground-water protection is not affected because the dose from an igneous event is predominately through the air pathway and not the ground-water pathway. The assessment for human intrusion is not affected because the assumed intrusion (*i.e.*, single borehole to the water table) scenario leads to a ground-water pathway, whereas the igneous event primarily involves the air pathway. As the State has indicated, the air pathway is considered in the assessment for individual protection.

Comment 2.4: The performance assessments for human intrusion and individual protection should consider similar FEPs, to provide a meaningful comparison of repository resilience.

Response 2.4: As discussed in the previous responses (under Comments 2.2 and 2.3), each of the three performance assessments (*i.e.*, those conducted to demonstrate compliance with the standards for individual protection, ground-water protection, and resiliency to an assumed human intrusion) has its own specific purpose, assumptions, and standards. The EPA standards and NRC’s regulations do not require that direct comparisons be made between any of these assessments. The performance assessment for human intrusion demonstrates the resilience of the repository by assuming a specified intrusion occurs and by requiring potential exposures to comply with the same overall exposure limit [*i.e.*, 0.15 mSv/yr (15 mrem/yr) from all pathways] used for individual protection. Although the EPA standards clearly state “unlikely” FEPs are not to be included in the assessment for human intrusion and ground-water protection (40 CFR 197.36), the performance assessments for individual protection, ground-water protection, and human intrusion provide a comprehensive evaluation of FEPs to inform the licensing decision. Regardless of which aspect of repository performance is the largest risk contributor, the regulatory

requirements for all assessments must be met.

Comment 2.5: The possibility of multiple intrusions into the repository should be considered as a likely event and included in the evaluation of human intrusion rather than the "single" intrusion prescribed in the EPA standards and adopted in NRC's regulations.

Response 2.5: The State raised a similar concern (*i.e.*, consideration for multiple intrusions) during the public comment period for part 63. The Commission addressed this issue when it finalized part 63, stating:

Another related issue is whether the stylized calculation should consider multiple intrusions. The final EPA standards resolve this issue in favor of a single intrusion. Moreover, in its findings and recommendations, NAS [National Academy of Sciences] argued against analyses of whether and how often exploratory drilling would occur at Yucca Mountain because of the complexities associated in such assessments. Simply stated, the NAS felt that no one can accurately predict the characteristics of future human society and their technology. In the context of human intrusion, estimating the probability of exploratory drilling for a given resource relies on an ability to predict certain economic and technical factors that influence supply of, and demand for, that resource. In fact, NAS noted that the continued advances in noninvasive geophysical techniques may, in fact, reduce the number and frequency of exploratory boreholes * * *

Consequently, any consideration for the drilling of multiple exploratory boreholes or later drilling of more boreholes further increases the speculative nature of the intrusion scenario with potentially little increase in understanding repository resilience.

The EPA standards provide for consideration of a single borehole at the earliest time that human intrusion into the waste package can occur without recognition by the drillers. The Commission believes this is an appropriate test for evaluating repository resilience. Moreover, the suggested alternative to evaluate multiple intrusions for the human intrusion calculation fails to reflect the purpose of the human intrusion calculation, that is to test the resilience of the repository, not to evaluate the speculative issue of frequency of the intrusion (66 FR 55761; November 2, 2001).

3. DOE Comments

DOE supports NRC's proposed probability range for defining unlikely FEPs as a reasonable and conservative choice.

Comment 3.1: For assessing operational safety of the repository,

NRC's regulations specify that operational events that occur one or more times during the operational period are considered reasonably likely to occur. Applying this definition (*i.e.*, one or more times) to the specification of a value to define unlikely FEPs results in an upper bound of one chance of occurrence within 10,000 years (*i.e.*, approximately 10^{-4} annual probability). Thus, NRC's proposal of an upper bound of one chance in ten of occurring within 10,000 years (*i.e.*, 10^{-5} annual probability) for unlikely FEPs is a reasonable and conservative approach.

Response 3.1: During the development of the proposed rulemaking, NRC considered an annual probability of 10^{-4} for the demarcation between likely and unlikely FEPs, but ultimately decided on a probability of one chance in ten of occurring within 10,000 years (*i.e.*, annual probability of 10^{-5}) as a prudent value, given the uncertainties in estimating the occurrence of FEPs over the very long compliance period. The Commission was careful to point out that its specification for unlikely events was in the context of very specific assessments (*i.e.*, those made to assess compliance with ground-water protection and human-intrusion standards) over a long time frame, and this specification was not intended to suggest or imply precedent for other significantly different applications that used the term "unlikely" (67 FR 3630; January 25, 2002). Similarly, significantly different applications such as requirements for the safety assessment of the operational period (*e.g.*, significantly shorter time period, inclusion of worker activities) should not imply a precedent for specifying a value for unlikely FEPs.

4. NEI Comments

NEI supports NRC's proposed probability range for defining unlikely FEPs. NEI stated that the proposed definition of unlikely FEPs will facilitate a reasonable and prudently conservative analysis of these aspects of repository performance (*i.e.*, ground-water protection and human intrusion).

5. Exelon Generation Comments

Exelon Generation supports NRC's proposed probability range for defining unlikely FEPs.

III. Changes From the Proposed Rule

Section 63.342 Limits on Performance Assessments

The word "should" has been replaced with the word "shall" to be consistent with the final EPA standard (40 CFR 197.36).

IV. Section-by-Section Analysis

Section 63.342 Limits on Performance Assessments

This section specifies how DOE will determine which features, events, and processes will be considered in the performance assessments described in subpart L of part 63.

V. 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 using such a standard is inconsistent with applicable law or is otherwise impractical. In this rule, NRC is establishing probability limits for unlikely FEPs at a potential geologic repository for high-level radioactive waste at Yucca Mountain, Nevada. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Finding of No Significant Environmental Impact: Availability

Pursuant to section 121(c) of the Nuclear Waste Policy Act, this rule does not require the preparation of an environmental impact statement under section 102(2)(c) of the National Environmental Policy Act of 1969 or any environmental review under subparagraph (E) or (F) of section 102(2) of such act.

VII. Paperwork Reduction Act Statement

This rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995. (44 U.S.C. 3501 *et seq.*) Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150-0199.

Public Protection Notification

If a means used to impose an information collection requirement does not display a currently valid OMB control number, NRC may not conduct nor sponsor, and a person is not required to respond to, the information collection.

VIII. Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. It is available for inspection in the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

Single copies of the analysis may be obtained from Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6203, e-mail: *cwp@nrc.gov*.

IX. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule relates to the licensing of only one entity, DOE, which does 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).

X. Backfit Analysis

NRC has determined that the backfit rule does not apply to this rule and, therefore, that a backfit analysis is not required, because this rule does not involve any provisions that would impose backfits as defined in 10 CFR chapter 1.

XI. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement 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 63

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

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; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 63.

PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

1. The authority citation for part 63 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and

5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97-425, 96 Stat. 2213g, 2238, as amended (42 U.S.C. 10134, 10141); and Pub. L. 102-486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

2. Section 63.342 is revised to read as follows:

§ 63.342 Limits on performance assessments.

DOE's performance assessments shall not include consideration of very unlikely features, events, or processes, *i.e.*, those that are estimated to have less than one chance in 10,000 of occurring within 10,000 years of disposal. DOE's assessments for the human-intrusion and ground-water protection standards shall not include consideration of unlikely features, events, and processes, or sequences of events and processes, *i.e.*, those that are estimated to have less than one chance in 10 and at least one chance in 10,000 of occurring within 10,000 years of disposal. In addition, DOE's performance assessments need not evaluate the impacts resulting from any features, events, and processes or sequences of events and processes with a higher chance of occurrence if the results of the performance assessments would not be changed significantly.

Dated at Rockville, Maryland, this 2nd day of October, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02-25521 Filed 10-7-02; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R-1132]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to reflect the annual indexing of the low reserve tranche and the reserve requirement exemption for 2003, and announces the annual indexing of the deposit reporting cutoff level that will be effective beginning in September 2003. The amendments increase the amount of transaction accounts subject to a reserve requirement ratio of three percent in 2003, as required by section 19(b)(2)(C) of the Federal Reserve Act, from \$41.3 million to \$42.1 million of net

transaction accounts. This adjustment is known as the low reserve tranche adjustment. The Board is increasing from \$5.7 million to \$6.0 million the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent in 2003. This action is required by section 19(b)(11)(B) of the Federal Reserve Act, and the adjustment is known as the reservable liabilities exemption adjustment. The Board is also increasing the deposit cutoff level that is used in conjunction with the reservable liabilities exemption to determine the frequency of deposit reporting from \$106.9 million to \$112.3 million for nonexempt depository institutions. (Nonexempt institutions are those with total reservable liabilities exceeding the amount exempted from reserve requirements.) Thus, beginning in September 2003, nonexempt institutions with total deposits of \$112.3 million or more will be required to report weekly while nonexempt institutions with total deposits less than \$112.3 million may report quarterly, in both cases on form FR 2900. Exempt institutions with at least \$6.0 million in total deposits may report annually on form FR 2910a.

DATES: Effective Date: November 7, 2002.

Compliance Dates: For depository institutions that report weekly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the fourteen-day reserve computation period that begins Tuesday, November 26, 2002, and the corresponding fourteen-day reserve maintenance period that begins Thursday, December 26, 2002. For institutions that report quarterly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the seven-day reserve computation period that begins Tuesday, December 17, 2002, and the corresponding seven-day reserve maintenance period that begins Thursday, January 16, 2003. For all depository institutions, the deposit cutoff level will be used to screen institutions in July of 2003 to determine the reporting frequency for the twelve month period that begins in September 2003.

FOR FURTHER INFORMATION CONTACT: Heatherun Allison, Counsel (202/452-3565), Legal Division, or June O'Brien, Economist (202/452-3790), Division of Monetary Affairs; for user of Telecommunications Device for the Deaf (TDD) only, contact (202/872-4984); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The required reserve ratio applicable to transaction account balances exceeding the low reserve tranche is 10 percent. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The adjustment in the tranche is to be 80 percent of the percentage increase or decrease in net transaction accounts at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Currently, the low reserve tranche on net transaction accounts is \$41.3 million. Net transaction accounts of all depository institutions rose by 2.5 percent (from \$596.7 billion to \$611.4 billion) from June 30, 2001, to June 30, 2002. In accordance with section 19(b)(2), the Board is amending Regulation D (12 CFR part 204) to increase the low reserve tranche for transaction accounts for 2003 by \$0.8 million to \$42.1 million.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. Unlike the adjustment for the low reserve tranche on net transaction accounts, which adjustment can result in a decrease as well as an increase, the change in the exemption amount is to be made only if the total reservable liabilities held at all depository institutions increase from one year to the next. The percentage increase in the exemption is to be 80 percent of the increase in total reservable liabilities of all depository institutions as of the year ending June 30. Total reservable liabilities of all depository institutions increased by 7.1 percent (from \$2,317.7 billion to \$2,481.7 billion) from June 30, 2001, to June 30, 2002. Consequently, the reservable liabilities exemption amount for 2003 under section 19(b)(11)(B) will be increased by \$0.3 million from \$5.7 million to \$6.0 million.¹

The effect of the application of section 19(b) of the Federal Reserve Act to the change in the total net transaction accounts and the change in the total

reservable liabilities from June 30, 2001, to June 30, 2002, is to increase the low reserve tranche to \$42.1 million, to apply a zero percent reserve requirement on the first \$6.0 million of net transaction accounts, and to apply a three percent reserve requirement on the remainder of the low reserve tranche.

For institutions that report weekly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective for the fourteen-day reserve computation period beginning Tuesday, November 26, 2002, and for the corresponding fourteen-day reserve maintenance period beginning Thursday, December 26, 2002. For institutions that report quarterly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective for the seven-day computation period beginning Tuesday, December 17, 2002, and for the corresponding seven-day reserve maintenance period beginning Thursday, January 16, 2003.

In order to reduce the reporting burden for small institutions, the Board has established a deposit reporting cutoff level to determine deposit reporting frequency. The Board has specified that the annual percentage increase in the nonexempt deposit cutoff be set equal to 80 percent of the growth rate of total deposits at all depository institutions over the one-year period ending on the most recent June 30.

From June 30, 2001, to June 30, 2002, total deposits increased 6.3 percent, from \$5,602.3 billion to \$5,955.9 billion. Accordingly, the nonexempt deposit cutoff level will increase by \$5.4 million from \$106.9 million in 2002 to \$112.3 million in 2003. Based on the indexation of the reservable liabilities exemption, the cutoff level for total deposits above which reports of deposits must be filed will rise from \$5.7 million to \$6.0 million. Under the deposit reporting system, institutions are screened during each year to determine their reporting category beginning in the September of that year. Hence, the cutoff level would be used in the 2003 deposit report screening process and new deposit reporting panels will be implemented in September 2003.

Thus, effective in September 2003, all U.S. branches and agencies of foreign banks and Edge and Agreement corporations, regardless of size, and other institutions with total reservable liabilities exceeding \$6.0 million (nonexempt institutions) and with total deposits at or above \$112.3 million would be required to file weekly the Report of Transaction Accounts, Other

Deposits and Vault Cash (form FR 2900). Nonexempt institutions with total deposits below \$112.3 million could file the FR 2900 quarterly. Institutions that obtain funds from non-U.S. sources or that have foreign branches or IBFs would continue to be required to file the Report of Certain Eurocurrency Transactions (forms FR 2950/FR 2951) at the same frequency as they file the form FR 2900. Institutions with reservable liabilities at or below the exemption amount of \$6.0 million (exempt institutions) and with at least \$6.0 million in total deposits would be required to file the Annual Report of Total Deposits and Reservable Liabilities (form FR 2910a). Institutions with total deposits below the exemption level of \$6.0 million would be excused from reporting if their deposits can be estimated from other data sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or overstates the deductions allowed in computing required reserve balances.

Notice. The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments prescribed by statute and by the Board's policy concerning reporting practices. In addition, the reservable liabilities exemption adjustment and the increases for reporting purposes in the deposit cutoff level reduce regulatory burdens on depository institutions, and the low reserve tranche adjustment will have a *de minimis* effect on depository institutions with net transaction accounts exceeding \$42.1 million. Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary.

Regulatory Flexibility Analysis

The Board certifies that these amendments will not have a substantial economic impact on small depository institutions.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

¹ Consistent with Board practice, the tranche and exemption amounts have been rounded to the nearest \$0.1 million.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. Section 204.9 is revised to read as follows:

§ 204.9 Reserve requirement ratios.

The following reserve ratios are prescribed for all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement
Net transaction accounts:	
\$0 to \$6.0 million	0 percent of amount.
Over \$6.0 million and up to \$42.1 million.	3 percent of amount.
Over \$42.1 million.	\$1,083,000 plus 10 percent of amount over \$42.1 million.
Nonpersonal time deposits.	0 percent.
Eurocurrency liabilities.	0 percent.

Dated: October 2, 2002.

By order of the Board of Governors of the Federal Reserve System.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02-25484 Filed 10-7-02; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE189, Special Condition 23-129-SC]

Special Conditions; Atlantic Aero, Inc. on the Raytheon Models 300, 300LW, B300, and B300C; Protection of Electronic Flight Instrument Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Atlantic Aero, Inc., P.O. Box 35408, Greensboro, North Carolina

27425-5408 for a Supplemental Type Certificate for the Raytheon Model 300, 300LW, B300 and B300C airplanes. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of an electronic flight instrument system (EFIS) display for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is September 25, 2002. Comments must be received on or before November 7, 2002.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. CE189, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE189. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329-4123.

SUPPLEMENTARY INFORMATION:

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications

received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE189." The postcard will be date stamped and returned to the commenter.

Background

On May 17, 2002, Atlantic Aero, Inc., P.O. Box 35408, Greensboro, North Carolina 27425-5408, made application to the FAA for a new Supplemental Type Certificate for the Raytheon Model 300, 300LW, B300, and B300C airplanes. The Raytheon Model 300 series airplane is currently approved under TC No. A24CE. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS, that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Atlantic Aero, Inc. must show that the Raytheon Model 300, 300LW, B300, and B300C aircraft meet the following provisions, or the applicable regulations in effect on the date of application for the change to the Raytheon Model 300, 300LW, B300, and B300C: For those areas modified or impacted by the installation of the Collins FD 2000 EFIS system the following paragraphs as amended by Amendments 23-1 through 23-54 must be complied with: 23.305, 23.307, 23.365, 23.603, 23.609, 23.611, 23.613, 23.625, 23.627, 23.771, 23.773, 23.777, 23.1301, 23.1303, 23.1309, 23.1311, 23.1321, 23.1322, 23.1331, 23.1335, 23.1351, 23.1357, 23.1359, 23.1361, 23.1365, 23.1367, 23.1381, 23.1431, 23.1529, 23.1541, 23.1543, 23.1581 and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane,

special conditions are prescribed under the provisions of § 21.16.

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 certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate 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

Atlantic Aero, Inc. plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic

systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term “critical” means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to Raytheon Model 300, 300LW, B300, and B300C airplanes. Should Atlantic Aero, Inc. apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate 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 affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has

determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

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 21.101; 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 Raytheon Model 300, 300LW, B300, and B300C airplanes modified by Atlantic Aero, Inc. to add an EFIS.

1. *Protection of Electrical and Electronic Systems From High Intensity Radiated Fields (HIRF)*. Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions*: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri, on September 25, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02-25471 Filed 10-7-02; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30332; Amdt. No. 3025]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard

Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 8, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 8, 2002.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT:

Donald P. Pate, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: PO Box 25082

Oklahoma City, OK 73125) telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAM as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce,

I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. It, therefore—(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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97:

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on September 27, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.35, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective October 31, 2002*

Huntsville, AL, Huntsville Intl-Carl T. Jones Field, ILS RWY 18R, Amdt 22
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, Converging ILS Y Rwy 18L, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, Converging ILS Z Rwy 18L, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, ILS Y Rwy 18L, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, ILS Z Rwy 18L, Orig

* * * *Effective November 28, 2002*

Alabaster, AL, Shelby County, RNAV (GPS) RWY 33, ORIG
Bentonville, AR, Bentonville Muni/Louise M. Thaden Field, RNAV (GPS) Rwy 18, Orig
Bentonville, AR, Bentonville Muni/Louise M. Thaden Field, RNAV (GPS) Rwy 36, Orig
Bentonville, AR, Bentonville Muni/Louise M. Thaden Field, VOR-A, Amdt 12
Bentonville, AR, Bentonville Muni/Louise M. Thaden Field, VOR/DME-B, Amdt 5
Bentonville, AR, Bentonville Muni/Louise M. Thaden Field, GPS Rwy 18, Amdt 1, Cancelled
Bentonville, AR, Bentonville Muni/Louise M. Thaden Field, GPS Rwy 36, Amdt 1, Cancelled
Palm Springs, CA, Desert Resorts Regional, VOR-A, Orig-A
San Diego, CA, San Diego Intl-Lindbergh Field, NDB Rwy 9, Amdt 19C
San Diego, CA, San Diego Intl-Lindbergh Field, NDB Rwy 27, Amdt 1D
San Diego, CA, San Diego Intl-Lindbergh Field, RNAV (GPS) Rwy 9, Orig
San Diego, CA, San Diego Intl-Lindbergh Field, RNAV (GPS) Rwy 27, Orig
Twentynine Palms, CA, Twentynine Palms, VOR Rwy 26, Amdt 1
Twentynine Palms, CA, Twentynine Palms, RNAV (GPS) Rwy 26, Orig
Zephyrhills, FL, Zephyrhills Muni, NDB Rwy 4, Orig
Zephyrhills, FL, Zephyrhills Muni, NDB Rwy 4, Orig, Cancelled
Chicago, IL, Chicago Midway, ILS Rwy 13C, Amdt 41
Chicago, IL, Chicago Midway, ILS Rwy 31C, Amdt 6
Chicago, IL, Chicago Midway, RNAV (GPS) Rwy 4L, Orig
Chicago, IL, Chicago Midway, RNAV (GPS) Rwy 13L, Orig
Chicago, IL, Chicago Midway, RNAV (GPS) Rwy 22R, Orig
Chicago, IL, Chicago Midway, RNAV (GPS) Rwy 31R, Orig
Muskegon, MI, Muskegon County, NDB Rwy 32, Amdt 12
Muskegon, MI, Muskegon County, ILS Rwy 24, Amdt 4
Muskegon, MI, Muskegon County, ILS Rwy 32, Amdt 17
Muskegon, MI, Muskegon County, RNAV (GPS) Rwy 6, Orig
Muskegon, MI, Muskegon County, RNAV (GPS) Rwy 14, Orig
Muskegon, MI, Muskegon County, RNAV (GPS) Rwy 24, Orig
Muskegon, MI, Muskegon County, RNAV (GPS) Rwy 32, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, RNAV (GPS) Rwy 4, Amdt 1

Ainsworth, NE, Ainsworth Muni, RNAV (GPS) Rwy 17, Orig
Ainsworth, NE, Ainsworth Muni, RNAV (GPS) Rwy 35, Orig
Ainsworth, NE, Ainsworth Muni, VOR Rwy 17, Amdt 3
Ainsworth, NE, Ainsworth Muni, VOR Rwy 35, Amdt 4
Ainsworth, NE, Ainsworth Muni, GPS Rwy 35, Orig-A Cancelled
Scribner, NE, Scribner State, RNAV (GPS) Rwy 17, Orig
Scribner, NE, Scribner State, RNAV (GPS) Rwy 35, Orig
Scribner, NE, Scribner State, VOR Rwy 35, Amdt 2
Matawan, NJ, Marlboro, VOR OR GPS-A, Amdt 1, Cancelled
Matawan, NJ, Marlboro, VOR/DME RNAV OR GPS Rwy 9, Amdt 1, Cancelled
Alamogordo, NM, Alamogordo-White Sands Regional, RNAV (GPS) Rwy 3, Orig
Alamogordo, NM, Alamogordo-White Sands Regional, VOR/DME Rwy 3, Orig
Alamogordo, NM, Alamogordo-White Sands Regional, VOR Rwy 3, Amdt 2
Alamogordo, NM, Alamogordo-White Sands Regional, NDB Rwy 3, Amdt 5
Alamogordo, NM, Alamogordo-White Sands Regional, GPS Rwy 3, Amdt 1A Cancelled
Durhamville, NY, Kamp, VOR OR GPS Rwy 28, Amdt 1A, Cancelled
Olean, NY, Cattaraugus County-Olean, NDB Rwy 22, Amdt 12A, Cancelled
Newburgh, NY, Stewart Intl, NDB Rwy 9, Amdt 8B
Newburgh, NY, Stewart Intl, ILS Rwy 9, Amdt 9
Newburgh, NY, Stewart Intl, RNAV (GPS) Rwy 9, Orig
Newburgh, NY, Stewart Intl, RNAV (GPS) Rwy 16, Orig
Newburgh, NY, Stewart Intl, (GPS) Rwy 16, Orig, Cancelled
Newburgh, NY, Stewart Intl, RNAV (GPS) Rwy 27, Orig
Newburgh, NY, Stewart Intl, GPS Rwy 27, Orig, Cancelled
Newburgh, NY, Stewart Intl, RNAV (GPS) Rwy 34, Orig
Kinston, NC, Kinston Regional Jetport at Stallings Field, VOR Rwy 23, Amdt 14
Louisburg, NC, Franklin County, ILS Rwy 4, Amdt 2
Bristow, OK, Jones Memorial, RNAV (GPS) Rwy 17, Orig
Bristow, OK, Jones Memorial, RNAV (GPS) Rwy 35, Orig
Bristow, OK, Jones Memorial, NDB Rwy 35, Amdt 2
Bristow, OK, Jones Memorial, GPS Rwy 17, Orig, Cancelled
Bristow, OK, Jones Memorial, GPS Rwy 35, Orig, Cancelled
Goldsby, OK, David Jay Perry, RNAV (GPS) Rwy 31, Orig
Goldsby, OK, David Jay Perry, VOR/DME Rwy 31, Amdt 1
Goldsby, OK, David Jay Perry, GPS Rwy 31, Orig, Cancelled
Madill, OK, Madill Muni, RNAV (GPS) Rwy 18, Orig
Madill, OK, Madill Muni, GPS Rwy 18, Orig, Cancelled
Mooreland, OK, Mooreland Muni, RNAV (GPS) Rwy 17, Orig

Mooreland, OK, Mooreland Muni, GPS Rwy 17, Orig, Cancelled

Muskogee, OK, Muskogee/Davis Field, RNAV (GPS) Rwy 4, Orig

Muskogee, OK, Muskogee/Davis Field, RNAV (GPS) Rwy 31, Orig

Muskogee, OK, Muskogee/Davis Field, NDB Rwy 31, Amdt 10

Muskogee, OK, Muskogee/Davis Field, VOR Rwy 31, Amdt 4

Muskogee, OK, Muskogee/Davis Field, GPS Rwy 4, Orig-B, Cancelled

Muskogee, OK, Muskogee/Davis Field, GPS Rwy 31, Orig, Cancelled

Bloomsburg, PA, Bloomsburg Muni, VOR-A, Orig

Bloomsburg, PA, Bloomsburg, Muni, VOR OR GPS Rwy 8, Amdt 2, Cancelled

Bloomsburg, PA, Bloomsburg, Muni, RNAV (GPS)-B Orig

Philadelphia, PA, Wings Field, VOR/DME RNAV Rwy 6, Amdt 4, Cancelled

Philadelphia, PA, Wings Field, NDB Rwy 6, Amdt 9

Philadelphia, PA, Wings Field, GPS Rwy 24, Orig, Cancelled

Philadelphia, PA, Wings Field, RNAV (GPS) Rwy 6, Orig

Philadelphia, PA, Wings Field, RNAV (GPS) Rwy 24, Orig

Dallas-Fort Worth, TX, Dallas-Fort Worth International, ILS Rwy 35C, Amdt

Dallas-Fort Worth, TX, Dallas-Fort Worth International, Converging ILS Rwy 35C, Amdt 5

Dallas-Fort Worth, TX, Dallas-Fort Worth International, RNAV (GPS) Rwy 35C, Orig

Dallas-Fort Worth, TX, Dallas-Fort Worth International, GPS Rwy 35C, Orig-A, Cancelled

Blanding, UT, Blanding Muni, RNAV (GPS) Rwy 35, Orig

Blanding, UT, Blanding Muni, GPS Rwy 35, Orig, Cancelled

Franklin, VA, Franklin Muni-John Beverly Rose, RNAV (GPS) Rwy 9, Orig

Franklin, VA, Franklin Muni-John Beverly Rose, RNAV (GPS) Rwy 27, Orig

Gordonsville, VA, Gordonsville Muni, NDB OR GPS Rwy 23, Orig, Cancelled

Wakefield, VA, Wakefield Muni, NDB Rwy 20, Amdt 4C

Wakefield, VA, Wakefield Muni, RNAV, (GPS) Rwy 20, Orig

Bellingham, WA, Bellingham Intl, ILS Rwy 16, Amdt 4

Bellingham, WA, Bellingham Intl, NDB Rwy 16, Amdt 1

Prairie Du Chien, WI, Prairie Du Chien Muni, VOR/DME Rwy 29, Amdt 8

Prairie Du Chien, WI, Prairie Du Chien Muni, RNAV (GPS) Rwy 14, Orig

Prairie Du Chien, WI, Prairie Du Chien Muni, RNAV (GPS) Rwy 32, Orig

Prairie Du Chien, WI, Prairie Du Chien Muni, RNAV (GPS) Rwy 29, Orig

Prairie Du Chien, WI, Prairie Du Chien Muni, GPS Rwy 29, Orig, Cancelled

[FR Doc. 02-25309 Filed 10-7-02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30333; Amdt. No. 3026]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: This rule is effective October 8, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 8, 2002.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT:

Donald P. Pate, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective date of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary

(FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAP and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. It, therefore—(1) is not a “significant regulatory action” under Executives 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on September 27, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

According, pursuant to the authority delegated to me, part 97 of the Federal

Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2)

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
08/15/02	NJ	Teterboro	Teterboro	2/8518	VOR RWY 24, Orig.
09/11/02	WV	Clarksburg	Harrison/Marion Regional	2/9616	VOR or GPS Rwy 3, AMDT 15A.
09/11/02	NJ	Teterboro	Teterboro	2/9624	ILS Rwy 6, Amdt 29A.
09/11/02	NJ	Teterboro	Teterboro	2/9626	VOR/DME Rwy 6, Orig-B.
09/11/02	NJ	Teterboro	Teterboro	2/9627	COPTER ILS Rwy 6, AMDT 1B.
09/11/02	NJ	Teterboro	Teterboro	2/9639	VOR/DME RNAV Rwy 24, Orig-B.
09/12/02	NY	Newburgh	Stewart Intl	2/9643	ILS Rwy 27, Orig.
09/13/02	TX	Houston	Sugar Land Muni/Hull Field	2/9673	ILS Rwy 35, Amdt 3.
09/13/02	TX	Houston	Sugar Land Muni/Hull Field	2/9675	VOR/DME-A, Amdt 1.
09/13/02	TX	Houston	Sugar Land Muni/Hull Field	2/9676	NDB Rwy 17, Amdt 9.
09/13/02	TX	Houston	Sugar Land Muni/Hull Field	2/9677	VOR/DME RNAV Rwy 35, Amdt 8.
09/13/02	TX	Houston	Sugar Land Muni/Hull Field	2/9682	RNAV (GPS) Rwy 17, Orig-A.
09/13/02	TX	Houston	Sugar Land Muni/Hull Field	2/9687	RNAV (GPS) Rwy 35, Orig.
09/13/02	TX	Houston	Sugar Land Muni/Hull Field	2/9688	NDB Rwy 35, Amdt 5.
09/16/02	TX	Center	Center Muni	2/9766	GPS Rwy 17, Amdt 1.
09/16/02	TX	Center	Center Muni	2/9767	GPS Rwy 35, Orig.
09/18/02	KY	Louisville	Louisville Intl-Standiford Field	2/9810	ILS Rwy 35L (Cat I, II, III), Amdt 1A.
09/18/02	IL	Chicago/Prospect Heights/Wheeling	Chicago/Palwaukee Muni	2/9811	VOR Rwy 16, Orig-A.
09/19/02	OH	Marion	Marion Muni	2/9847	LOC/DME Rwy 24, Orig.
09/19/02	OH	Marion	Marion Muni	2/9848	GPS Rwy 24, Orig-A.
09/19/02	CA	Vacaville	Nut Tree	2/9852	GPS Rwy 20, Amdt 1A.
09/19/02	MN	Winona	Winona Muni-Conrad Field	2/9857	VOR Rwy 29, Amdt 16.
09/19/02	MN	Winona	Winona Muni-Conrad Field	2/9858	RNAV (GPS) Rwy 29, Orig.
09/23/02	FM	Yap Island	Yap Intl	2/9977	NDB Rwy 7, Amdt 1.
09/24/02	WI	Sturgeon Bay	Door County Cherryland	2/0071	NDB or GPS Rwy 1, Amdt 10.
09/24/02	WI	Sturgeon Bay	Door County Cherryland	2/0072	SDF Rwy 1, Amdt 6.
09/25/02	OH	Cleveland	Cleveland Hopkins Intl	2/0123	NDB or GPS Rwy 24L, Amdt 1C.
09/25/02	WI	Madison	Dane County Regional Truax Field	2/0136	VOR Rwy 13, Orig.
09/25/02	WI	Madison	Dane County Regional Truax Field	2/0138	RNAV (GPS) Rwy 13, Orig.
09/25/02	WI	Madison	Dane County Regional Truax Field	2/0139	RNAV (GPS) Rwy 31, Orig.

FDC date	State	City	Airport	FDC No.	Subject
09/25/02	WI	Madison	Dane County Regional Truax Field	2/0140	VOR/DME or Tacan Rwy 13, Orig.
09/25/02	WI	Madison	Dane County Regional Truax Field	2/0141	VOR/DME or Tacan Rwy 31, Orig.
09/26/02	MI	Grand Rapids	Gerald R. Ford Intl	2/0116	ILS Rwy 8R, Amdt 5C

[FR Doc. 02-25310 Filed 10-7-02; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF VETERANS AFFAIRS

**38 CFR Parts 1 and 39
 RIN 2900-AJ77**

Prohibition of Interment or Memorialization in National Cemeteries and Certain State Cemeteries Due to Commission of Capital Crimes

AGENCY: Department of Veterans Affairs.
ACTION: Final rule.

SUMMARY: This final rule amends the Department of Veterans Affairs (VA) regulations governing eligibility for interment or memorialization in national cemeteries and in State cemeteries receiving State cemetery grants from VA. The final rule concerns statutory provisions designed to ensure that the remains of certain persons who committed Federal or State capital crimes are not interred in such cemeteries and that the memory of such persons is not memorialized in such cemeteries.

DATES: *Effective Date:* This final rule is effective November 7, 2002.

Applicability Date. The provisions of Public Law 105-116 were enacted on November 21, 1997, and subsequently codified at 38 U.S.C. 2408(d) and 2411. Consistent with the enabling legislation, the provisions to this regulation shall apply to requests for interment or memorialization made on or after November 21, 1997, and to State cemetery grants made on or after November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Kimberly Wright, Program Analyst, Office of Field Programs (401A2), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, or Karen Barber, Program Analyst, Legislative and Regulatory Division (402B3), (202) 273-5307 or (202) 273-5183, respectively. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: On July 21, 2000, the National Cemetery Administration (NCA) published in the

Federal Register (65 FR 45332) a proposed rule which would implement the provisions of 38 U.S.C. 2408(d) and 2411. The final rule generally prohibits interment or memorialization in a VA national cemetery of a person who is convicted of a Federal capital crime and sentenced to death or life imprisonment, or is convicted of a State capital crime, and sentenced to death or life imprisonment without parole. The final rule, at 38 CFR 1.618, also addresses when Federal officials are authorized to deny burial in VA national cemeteries to persons who are shown by clear and convincing evidence to have committed a Federal or State capital crime but were not convicted of such crime because of flight to avoid prosecution or by death prior to trial. The Secretary is also authorized to provide aid to States for the establishment, expansion and/or improvement of State veterans cemeteries. Under 38 U.S.C. 2408(d)(1), State cemetery grants are conditioned on the application by the individual State of the prohibition against interment or memorialization of individuals convicted of Federal or State capital crimes, or found by clear and convincing evidence to have committed such crimes, without having been convicted of the crimes due to flight or death prior to trial. The final rule amends VA's regulation governing the State Cemetery Grants Program, 38 CFR 39.3(b), to note this requirement.

Comment on Proposed Rule

We provided a 60-day comment period that ended September 19, 2000. We received one written response by e-mail during this period. The response included three comments. First, it suggested improving the proposed rule by using a "delimiting" date to this regulation for consideration of veterans who were convicted prior to 1997. Congress specified that 38 U.S.C. 2411 would apply to applications for interment or memorialization made on or after November 21, 1997. Accordingly, our implementing regulations must reflect this date of applicability. The second comment suggested that, for those cases where a person avoided conviction due to either flight or death, the standard for determining whether a person committed a capital crime should be

beyond a reasonable doubt, not preponderance of the evidence. Congress specified that the standard of review for making decisions of this nature is "clear and convincing evidence" (38 U.S.C. 2411) and we have no authority to deviate from this standard of review.

The third comment asked whether there was a problem, in cemeteries where Native Americans and Prisoners of War (POWs) were interred, that might require individuals in these categories who had committed capital crimes to be disinterred. VA is not aware of any problems caused by the interment of Native Americans and POWs that relate to its implementation of the capital crimes prohibition. While such individuals are buried in certain VA national cemeteries, Public Law 105-116, which established the capital-crimes burial prohibition, is not retroactive to interment or memorialization requests predating November 21, 1997. Further, 38 CFR 1.621 provides that, interment in national cemeteries is considered "permanent and final," and sets forth stringent prerequisites for disinterment. Further, it provides that disinterment proceedings are matters that VA may not initiate.

For these reasons, we believe it is not necessary to revise the rule based on the views expressed by the commenter.

Revisions to the Inquiry and Proceedings Process Contained in the Proposed Rule

Since November 1997, NCA cemetery directors have dealt with several benefit cases in which the capital crime ban came into play. The majority of the cases involved situations in which an individual avoided conviction either due to flight or death. Because of lessons learned through experience, we are amending § 1.618. Those modifications, which are described below, are procedural as opposed to substantive in nature.

First, when a cemetery director receives a request for burial and there is reason to believe that a capital crime may have taken place, the cemetery director is required to initiate an inquiry seeking information in order to make an initial decision on the case. Once made aware of this requirement, families often

decide to bury at a location other than a VA national cemetery. Under the proposed rule, the cemetery director is required to continue the inquiry process even though the decedent has been buried elsewhere. In order to be sensitive to grieving families, NCA prefers to interpret private burial as a withdrawal of the request for national cemetery burial. Section 1.618(b) of the final rule has been modified so that if alternative burial arrangements are made during the inquiry all further VA action on the request for burial will cease.

Second, § 1.618(c)(2) as proposed included a provision on the number of days the family or other personal representative has to respond to a notice from the cemetery director stating that there appears to be clear and convincing evidence that a capital crime took place. This section has been revised to provide additional time for the family or other personal representative to respond. Upon receipt of the notice, the family or other personal representative will have 15 instead of 10 days to respond.

Third, the proposed version of § 1.618(c)(2) has been modified to include an additional option for the family or other personal representative. Initially, the family or other personal representative could: (1) Request a hearing on the matter, (2) submit a written statement, with or without supporting documentation, for inclusion in the record, or (3) waive these two options. There was no option for the family or other personal representative to end the process if so desired. Through experience, we have found that several families made alternate burial arrangements at a location other than a VA national cemetery. NCA did not receive any further communications regarding national cemetery burial from these families. This new option allows the family or other personal representative to end the benefit decision process at this point and avoid having a finding made by VA. Under the final rule, the family or other personal representative may notify the cemetery director that the request for interment or memorialization is withdrawn, thereby, ending the claim process. This provides the family a simple means of ending the inquiry process. Under the proposed rule, VA was required to complete the process even if the decedent were buried in a private cemetery.

Fourth, § 1.618(d), as proposed, authorized the cemetery director or his or her designee to act as the Hearing Official when the family or other personal representative requests a hearing. As it is not feasible for NCA to train all cemetery directors as Hearing

Officials (for potentially a limited number of cases), this section has been modified. Under the final rule, the Director, Memorial Services Network will conduct the hearing.

Fifth, § 1.618(h), as proposed, required that appellate rights be provided even if the burial request was granted. This section has been revised to make clear that appellate rights need only be furnished when a request for burial or interment is denied. Notice of appellate rights accompanying a decision granting a request for burial or interment is unnecessary and may be confusing to the recipient of the notice.

In addition, because the regulations are clear as to their scope, the information included in the Note to § 1.617 is unnecessary. Therefore, the Note following that section has been removed.

Over the past four years NCA staff has closely monitored the processing of cases where the capital crimes prohibition might apply. The above changes are based upon NCA experience gathered during this time. These minor procedural modifications will reduce the burden on grieving families, improve clarity, reduce processing time, and increase efficiency.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule without change except that we are making nonsubstantive changes for purposes of clarity and are making the changes discussed above.

Paperwork Reduction Act

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

Unfunded Mandates

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

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect

any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers for this rule are 64.201, 64.202, and 64.203.

List of Subjects

38 CFR Part 1

Administrative practice and procedure, Cemeteries, Claims, Crimes, Criminal offenses.

38 CFR Part 39

Cemeteries, Grant programs-veterans, Veterans.

Approved: September 25, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR parts 1 and 39 are amended as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 1.600 is added to read as follows:

§ 1.600 Definitions.

(a) *[Reserved]*

(b) *Definitions.* For purposes of §§ 1.617 and 1.618:

Appropriate State official means a State attorney general or other official with statewide responsibility for law enforcement or penal functions.

Clear and convincing evidence means that degree of proof which produces in the mind of the fact-finder a firm belief regarding the question at issue.

Convicted means a finding of guilt by a judgment or verdict or based on a plea of guilty, by a Federal or State criminal court.

Federal capital crime means an offense under Federal law for which the death penalty or life imprisonment may be imposed.

Interment means the burial of casketed remains or the placement or scattering of cremated remains.

Life imprisonment means a sentence of a Federal or State criminal court directing confinement in a penal institution for life.

Memorialization means any action taken to honor the memory of a deceased individual.

Personal representative means a family member or other individual who

has identified himself or herself to the National Cemetery Administration cemetery director as the person responsible for making decisions concerning the interment of the remains of or memorialization of a deceased individual.

State capital crime means, under State law, the willful, deliberate, or premeditated unlawful killing of another human being for which the death penalty or life imprisonment without parole may be imposed.

(Authority: 38 U.S.C. 2408, 2411)

3. Section 1.617 is added to read as follows:

§ 1.617 Prohibition of interment or memorialization of persons who have been convicted of Federal or State capital crimes.

(a) *Prohibition.* The interment in a national cemetery under the control of the National Cemetery Administration of the remains, or the memorialization, of any of the following persons is prohibited:

(1) Any person identified to the Secretary of Veterans Affairs by the United States Attorney General, prior to approval of interment or memorialization, as an individual who has been convicted of a Federal capital crime and sentenced to death or life imprisonment as a result of such crime.

(2) Any person identified to the Secretary of Veterans Affairs by an appropriate State official, prior to approval of interment or memorialization, as an individual who has been convicted of a State capital crime and sentenced to death or life imprisonment without parole as a result of such crime.

(3) Any person found under procedures specified in § 1.618 to have committed a Federal or State capital crime but have avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution.

(b) *Notice.* The prohibition referred to in paragraph (a)(3) of this section is not contingent on receipt by the Secretary of Veterans Affairs or any other VA official of notice from any Federal or State official.

(c) *Receipt of notification.* The Under Secretary for Memorial Affairs is delegated authority to receive from the United States Attorney General and appropriate State officials on behalf of the Secretary of Veterans Affairs the notification of conviction of capital crimes referred to in paragraphs (a)(1) and (2) of this section.

(d) *Decision where notification previously received.* Upon receipt of a request for interment or

memorialization, where the Secretary of Veterans Affairs has received the notification referred to in paragraph (a)(1) or (2) of this section with regard to the deceased, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411.

(e) *Inquiry.* (1) Upon receipt of a request for interment or memorialization, where the Secretary of Veterans Affairs has not received the notification referred to in paragraph (a)(1) or (a)(2) of this section with regard to the deceased, but the cemetery director has reason to believe that the deceased may have been convicted of a Federal or State capital crime, the cemetery director will initiate an inquiry to either:

(i) The United States Attorney General, in the case of a Federal capital crime, requesting notification of whether the deceased has been convicted of a Federal capital crime for which the deceased was sentenced to death or life imprisonment; or

(ii) An appropriate State official, in the case of a State capital crime, requesting notification of whether the deceased has been convicted of a State capital crime for which the deceased was sentenced to death or life imprisonment without parole.

(2) The cemetery director will defer decision on whether to approve interment or memorialization until after a response is received from the Attorney General or appropriate State official.

(f) *Decision after inquiry.* Where an inquiry has been initiated under paragraph (e) of this section, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411 upon receipt of the notification requested under that paragraph, unless the cemetery director initiates an inquiry pursuant to § 1.618(a).

(g) *Notice of decision.* Written notice of a decision under paragraph (d) or (f) of this section will be provided by the cemetery director to the personal representative of the deceased, along with written notice of appellate rights in accordance with § 19.25 of this title. This notice of appellate rights will include notice of the opportunity to file a notice of disagreement with the decision of the cemetery director. Action following receipt of a notice of disagreement with a denial of eligibility for interment or memorialization under this section will be in accordance with §§ 19.26 through 19.38 of this title.

(Authority: 38 U.S.C. 512, 2411, 7105)

4. Section 1.618 is added to read as follows:

§ 1.618 Findings concerning commission of a capital crime where a person has not been convicted due to death or flight to avoid prosecution.

(a) *Inquiry.* With respect to a request for interment or memorialization, if a cemetery director has reason to believe that a deceased individual who is otherwise eligible for interment or memorialization may have committed a Federal or State capital crime, but avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution, the cemetery director, with the assistance of the VA regional counsel, as necessary, will initiate an inquiry seeking information from Federal, State, or local law enforcement officials, or other sources of potentially relevant information. After completion of this inquiry and any further measures required under paragraphs (c), (d), (e), and (f) of this section, the cemetery director will make a decision on the request for interment or memorialization in accordance with paragraph (b), (e), or (g) of this section.

(b) *Decision approving request without a proceeding or termination of a claim by personal representative without a proceeding.* (1) If, after conducting the inquiry described in paragraph (a) of this section, the cemetery director determines that there is no clear and convincing evidence that the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, and the deceased remains otherwise eligible, the cemetery director will make a decision approving the interment or memorialization.

(2) If the personal representative elects for burial at a location other than a VA national cemetery, or makes alternate arrangements for burial at a location other than a VA national cemetery, the request for interment or memorialization will be considered withdrawn and action on the request will be terminated.

(c) *Initiation of a proceeding.* (1) If, after conducting the inquiry described in paragraph (a) of this section, the cemetery director determines that there appears to be clear and convincing evidence that the deceased has committed a Federal or State capital crime of which he or she was not convicted by reason of unavailability for trial due to death or flight to avoid prosecution, the cemetery director will provide the personal representative of the deceased with a written summary of the evidence of record and a written notice of procedural options.

(2) The notice of procedural options will inform the personal representative

that he or she may, within 15 days of receipt of the notice:

- (i) Request a hearing on the matter;
- (ii) Submit a written statement, with or without supporting documentation, for inclusion in the record;
- (iii) Waive a hearing and submission of a written statement and have the matter forwarded immediately to the Under Secretary for Memorial Affairs for a finding; or

(iv) Notify the cemetery director that the personal representative is withdrawing the request for interment or memorialization, thereby, closing the claim.

(3) The notice of procedural options will also inform the personal representative that, if he or she does not exercise one or more of the stated options within the prescribed period, the matter will be forwarded to the Under Secretary for Memorial Affairs for a finding based on the existing record.

(d) *Hearing.* If a hearing is requested, the Director, Memorial Services Network will conduct the hearing. The purpose of the hearing is to permit the personal representative of the deceased to present evidence concerning whether the deceased committed a crime which would render the deceased ineligible for interment or memorialization in a national cemetery. Testimony at the hearing will be presented under oath, and the personal representative will have the right to representation by counsel and the right to call witnesses. The VA official conducting the hearing will have the authority to administer oaths. The hearing will be conducted in an informal manner and court rules of evidence will not apply. The hearing will be recorded on audiotape and, unless the personal representative waives transcription, a transcript of the hearing will be produced and included in the record.

(e) *Decision of approval or referral for a finding after a proceeding.* Following a hearing or the timely submission of a written statement, or in the event a hearing is waived or no hearing is requested and no written statement is submitted within the time specified:

(1) If the cemetery director determines that it has not been established by clear and convincing evidence that the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, and the deceased remains otherwise eligible, the cemetery director will make a decision approving interment or memorialization; or

(2) If the cemetery director believes that there is clear and convincing

evidence that the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, the cemetery director will forward a request for a finding on that issue, together with the cemetery director's recommendation and a copy of the record to the Under Secretary for Memorial Affairs.

(f) *Finding by the Under Secretary for Memorial Affairs.* Upon receipt of a request from the cemetery director under paragraph (e) of this section, the Under Secretary for Memorial Affairs will make a finding concerning whether the deceased committed a Federal or State capital crime of which he or she was not convicted by reason of unavailability for trial due to death or flight to avoid prosecution. The finding will be based on consideration of the cemetery director's recommendation and the record supplied by the cemetery director.

(1) A finding that the deceased committed a crime referred to in paragraph (f) of this section must be based on clear and convincing evidence.

(2) The cemetery director will be provided with written notification of the finding of the Under Secretary for Memorial Affairs.

(g) *Decision after finding.* Upon receipt of notification of the finding of the Under Secretary for Memorial Affairs, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411. In making that decision, the cemetery director will be bound by the finding of the Under Secretary for Memorial Affairs.

(h) *Notice of decision.* The cemetery director will provide written notice of the finding of the Under Secretary for Memorial Affairs and of a decision under paragraph (b), (e)(1), or (g) of this section. With notice of any decision denying a request for interment or memorialization, the cemetery director will provide written notice of appellate rights to the personal representative of the deceased, in accordance with § 19.25 of this title. This will include notice of the opportunity to file a notice of disagreement with the decision of the cemetery director and the finding of the Under Secretary for Memorial Affairs. Action following receipt of a notice of disagreement with a denial of eligibility for interment or memorialization under this section will be in accordance with §§ 19.26 through 19.38 of this title.

(Authority: 38 U.S.C. 512, 2411)

PART 39—STATE CEMETERY GRANTS

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

Authority: 38 U.S.C. 2408.

6. In § 39.2, a new paragraph (d) is added immediately following the authority citation at the end of paragraph (c) to read as follows:

§ 39.2 Scope of the State cemetery grants program.

* * * * *

(d) Any grant under this part made on or after November 21, 1997, is made on the condition that after the date of receipt of the grant the State receiving the grant, subject to requirements for receipt of notice in 38 U.S.C. 2408 and 2411, will prohibit in the cemetery for which the grant is furnished the interment of the remains of or the memorialization of any person:

(1) Who has been convicted of a Federal capital crime for which the person was sentenced to death or life imprisonment;

(2) Who has been convicted of a State capital crime for which the person was sentenced to death or life without parole; or

(3) Who has been found by an appropriate State official, under procedures to be established by the State, to have committed a Federal or State capital crime but to have not been convicted of such crime by reason of unavailability for trial due to death or flight to avoid prosecution.

(Authority: 38 U.S.C. 2408, 2411).

7. In § 39.3, paragraph (b)(1) and the authority citation at the end of the section are revised to read as follows:

§ 39.3. Applications with respect to projects.

* * * * *

(b) * * *

(1) Any cemetery established, expanded, or improved through assistance of this program shall be used exclusively for the interment or memorialization of eligible persons, as set forth in §§ 39.1(h) and 39.2(a), whose interment or memorialization is not contrary to the conditions of the grant (see § 39.2(d) and 38 U.S.C. 2408 and 2411).

* * * * *

(Authority: 38 U.S.C. 2408, 2411)

* * * * *

[FR Doc. 02-25493 Filed 10-7-02; 8:45 am]

BILLING CODE 8320-01-P

**DEPARTMENT OF VETERANS
AFFAIRS**

38 CFR Part 36

RIN 2900-AG20

**Loan Guaranty: Net Value and Pre-
Foreclosure Debt Waivers**

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: We are amending the Loan Guaranty Regulations to change the formula for calculating the net value of property securing VA guaranteed loans being terminated and to add criteria for granting preforeclosure debt waivers. The changes regarding net value appear necessary to more accurately reflect current costs. The changes regarding waivers appear necessary to more accurately reflect statutory intent.

DATES: *Effective Date:* November 7, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Fyne, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington DC 20420, telephone (202) 273-7380.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on August 1, 2000 (65 FR 46882), we proposed to amend the Loan Guaranty Regulations (38 CFR part 36) to change the formula for calculating the net value of property securing VA guaranteed loans being terminated and to add criteria for granting preforeclosure debt waivers.

Under current law, when a VA guaranteed loan is reported as being in default, the Secretary is required to establish the "net value" of the property securing the guaranteed loan in default. "Net value" means the fair market value of the property minus certain costs that VA would incur to acquire, manage, and dispose of the property. The relationship between the net value of the property, the total indebtedness of the veteran at the time of loan termination, and the amount of VA's guaranty determines whether or not VA may acquire the property following foreclosure from the foreclosing loan holder. These factors also affect the Government's claim payment to the foreclosing holder under the guaranty. In addition, they will affect the amount of the veteran's debt to the Government under those circumstances where, by law, VA is entitled to establish a debt against a veteran. Moreover, they affect the VA's loss on the guaranty transaction which, in turn, will affect

the veteran's ability to have previously-used entitlement restored.

Previously, under § 36.4301, VA computed "net value" using cost data for the proceeding three fiscal years. We proposed to change how VA computes "net value." Instead of using three years' data, we proposed to use data only from the most recent fiscal year.

We also proposed to make nonsubstantive changes to the definition of "net value" for purposes of clarification and conformance to statutory provisions.

The comment period ended October 2, 2000. We received comments from one commenter, an association that represents mortgage lenders. These comments are discussed below. Based on the rationale set forth in the proposed rule and this document, we have adopted the provisions of the proposed rule as a final rule with a change in the definition of "net value," explained below.

Using data from 1995 through 2000, the commenter provided its fiscal analysis of the impact of the proposed rule on the mortgage industry if the proposed rule had been in effect. The analysis performed by the commenter revealed little change in using three years compared to one year. Even so, the commenter requested that VA not change the formula until after conducting a thorough analysis, including the impact on the number of *no-bids* (*buy-downs*) and consideration of "anticipated changes in policies and procedures".

It is necessary to describe *no-bids* and *buy-downs* to address this concern. VA computes the net value of the property securing the loan in each case prior to termination. This is done to determine whether VA can lower its claim liability. If the difference between the loan indebtedness and the net value is less than VA's maximum claim liability on the case, then VA can reduce its liability by requiring the loan holder to credit the account with the net value of the property. The holder then can convey the property to VA in return for its net value.

If the difference between the loan indebtedness and the net value is greater than VA's maximum claim liability, VA cannot reduce its liability. In that case VA does not specify in advance a minimum amount to be credited to the loan account, and the holder cannot convey the property to VA. The industry typically calls such cases *no-bids*.

When a holder receives advice that a case is a *no-bid*, it may decide to voluntarily waive part of the loan indebtedness. This is done to reduce the

difference between loan indebtedness and the net value to a point where the difference is less than VA's claim liability. Then VA can reduce its liability by requiring the loan holder to credit the remaining indebtedness with the net value, and the case is no longer a *no-bid*. The amount waived by the holder is called the *buy-down*.

After giving careful consideration to the comment we have determined that further analyses is not warranted. The argument that we should give consideration to anticipated changes in policies and procedures is not a basis for giving further analysis before establishing a rule change. Furthermore, even if such an analysis were possible, VA's primary goal for this rule was to more accurately reflect in any future year the cost of acquiring, managing, and disposing of properties. Using the most recent data available would provide a better predictor of costs in the coming year.

An example provided by the commenter of a policy change impacting net value was the potential cost of lead-based paint hazard reductions. The commenter expressed concern that moving from considering three years' data to one year's data would likely increase the number of *no-bids* immediately after VA implemented the lead-based paint procedures. However, as we stated above, VA's primary goal is to accurately reflect the cost to VA of acquiring, managing, and disposing of properties. In the case of lead-based paint procedures, VA has decided not to significantly change procedures and therefore there should be no real changes in costs attributable to them. Just as implementing a new procedure like lead paint abatement could show an immediate impact on *no-bids*, future cost savings by VA resulting from legislation, regulations, or management efficiencies would be recognized more quickly, to the advantage of loan holders by VA adopting the proposed rule. Therefore VA continues to believe, as the commenter noted, that moving to annualized cost data would have a neutral impact over time.

The definition of net value, in the proposed rule, requires VA to determine the costs of acquiring and disposing of property. One of the cost factors the proposed rule required VA to determine was losses on resale. The commenter requested that VA also include average resale gains in calculating a property's net value. The commenter asserted that this is consistent with the Department's stated goal of creating a net value that more accurately reflects current costs. Failure to recognize such gains would understate a property's net value and

unfairly increase no-bids. We agree with the rationale set forth by the commenter, and have made an appropriate change to the final rule so that VA will consider losses and gains when calculating net value using the previous year's operating expenses.

Unfunded Mandates

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

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of the final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The rule only affects VA guaranteed loan foreclosures. Such foreclosures represent only a small part of affected lenders' businesses. Moreover, the effect of the rule will be cost-neutral in almost all cases. Therefore, pursuant to 5 U.S.C. 605(b), the rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.118.

List of Subjects in 38 CFR Part 36

Condominiums, Flood insurance, Housing, Indians, Individuals with disabilities, Loan programs-housing and community development, Loan programs-Indians, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: July 12, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as follows:

PART 36—LOAN GUARANTY

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

Authority: 38 U.S.C. 501, 3701-3704, 3707, 3710-3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. In § 36.4301, the introductory text for the term "Net Value", and paragraph (3) are revised, to read as follows:

§ 36.4301 Definitions.

* * * * *

Net value. The fair market value of real property, minus an amount representing the costs that the Secretary estimates would be incurred by VA in acquiring and disposing of the property. The number to be subtracted from the fair market value will be calculated by multiplying the fair market value by the current cost factor. The cost factor used will be the most recent percentage of the fair market value that VA calculated and published in the Notices section of the **Federal Register** (it is intended that this percentage will be calculated annually). In computing this cost factor, VA will determine the average operating expenses and losses (or gains) on resale incurred for properties acquired under § 36.4320 which were sold during the preceding fiscal year and the average administrative cost to VA associated with the property management activity. The final net value derived from this calculation will be stated as a whole dollar amount (any fractional amount will be rounded up to the next whole dollar). The cost items included in the calculation will be:

* * * * *

(3) *Administrative costs.* (i) An estimate of the total cost for VA of personnel (salary and benefits) and overhead (which may include things such as travel, transportation, communication, utilities, printing, supplies, equipment, insurance claims and other services) associated with the acquisition, management and disposition of property acquired under § 36.4320 of this part. The average administrative costs will be determined by:

(A) Dividing the total cost for VA personnel and overhead salary and benefits costs by the average number of properties on hand and adjusting this figure based on the average holding time for properties sold during the preceding fiscal year; then

(B) Dividing the figure calculated in paragraph (3)(i)(A) of this definition by the VBA ratio of personal services costs to total obligations.

(ii) The three cost averages will be added to the average loss (or gain) on

property sold during the preceding fiscal year (based on the average property purchase price) and the sum will be divided by the average fair market value at the time of acquisition for properties which were sold during the preceding fiscal year to derive the percentage to be used in estimating net value.

3. Section 36.4323 is amended by:

A. In paragraph (e)(1)(v), removing "liability." from the end of the paragraph and adding, in its place, "liability; or".

B. Adding paragraph (e)(1)(vi).

C. In paragraph (e)(4), revising the first sentence and the authority citation at the end of the paragraph.

The addition and revisions read as follows:

§ 36.4323 Subrogation and indemnity.

* * * * *

(e) * * *

(1) * * *

(vi) The obligor being released is not the current titleholder to the property and there are no indications of fraud, misrepresentation, or bad faith on the obligor's part in obtaining the loan or disposing of the property or in connection with the loan default.

* * * * *

(4) Determinations made under paragraphs (e)(1) and (e)(2) of this section are intended for the benefit of the Government in reducing the amount of claim payable by VA and/or avoiding the establishment of uncollectible debts owing to the United States. * * *

(Authority: 38 U.S.C. 501, 3703(c)(1), 5302)

* * * * *

[FR Doc. 02-25494 Filed 10-7-02; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL-7392-1]

RIN 2050-AE91

Municipal Solid Waste Landfill Location Restrictions for Airport Safety

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received adverse comment, we are withdrawing the direct final rule for Municipal Solid Waste Landfill Location Restrictions for Airport Safety. We published the direct final rule on July 11, 2002 (67 FR 45915)

to amend the location restriction requirements in the criteria for municipal solid waste landfills in order to incorporate new landfill siting requirements enacted in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. We stated in that **Federal Register** document that if we received adverse comment by August 12, 2002, we would publish a timely notice of withdrawal in the **Federal Register**. We subsequently received adverse comment on that direct final rule. We will address those comments in a subsequent final action based on the parallel proposal also published on July 11, 2002 (67 FR 45948). As stated in the parallel proposal, we will not institute a second comment period on this action. Although EPA is issuing this withdrawal of its direct final rule, the new siting requirements enacted in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century continue to remain in effect.

DATES: As of October 8, 2002, EPA withdraws the direct final rule published at 67 FR 45915, on July 11, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Moorcones, Office of Solid Waste and Emergency Response, Office of Solid Waste, Municipal and Industrial Solid Waste Division (mail code 5305W), U.S. Environmental Protection Agency Headquarters (EPA HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone: 540-338-1348; e-mail:

<moorcones.mary@epamail.epa.gov>.

Dated: October 2, 2002.

Christine Todd Whitman,
Administrator, Environmental Protection Agency.

[FR Doc. 02-25582 Filed 10-7-02; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02-278, CC Docket No. 92-90, FCC 02-250]

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission announces that it will terminate and close CC Docket No. 92-90. On September 12, 2002, the

Commission adopted a Notice of Proposed Rulemaking (NPRM) on its rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). The NPRM seeks comment on whether the Commission's rules governing unsolicited advertising using the telephone and facsimile machine need to be revised in order to more effectively carry out Congress's directives in the TCPA. The Commission will close and terminate CC Docket No. 92-90 and open a new docket to address the issues raised in this proceeding.

DATES: Effective October 8, 2002.

FOR FURTHER INFORMATION CONTACT:

Erica H. McMahon or Richard D. Smith at 202-418-2512, Consumer & Governmental Affairs Bureau.

SUPPLEMENTARY INFORMATION: On

September 12, 2002, the Commission adopted an NPRM and Memorandum Opinion and Order in CG Docket No. 02-278 and CC Docket No. 92-90, FCC 02-250. In the NPRM, the Commission seeks comment on whether to revise, clarify or adopt any additional rules pursuant to the TCPA on the use of telephone and facsimile machines to deliver unsolicited advertisements. The Commission also seeks comment on whether to reconsider the option of establishing a national do-not-call list. In the Memorandum Opinion and Order, the Commission notes that the telemarketing marketplace has undergone significant changes. In addition, the Commission has received thousands of complaints from consumers who allege violations of the TCPA and our rules and orders. Based on these complaints, the changes in the way telemarketing is conducted, and our decision to revisit the option of establishing a national do-not-call list, it is clear that the focus of this proceeding has changed significantly from when the *1997 TCPA Reconsideration Order* (62 FR 19686, April 23, 1997) was released. Therefore, the Commission announces that it will close and terminate CC Docket No. 92-90 and open a new docket to address the issues raised in this proceeding. Only pending Petitions and Requests for Clarification from CC Docket 92-90 will be incorporated into the instant proceeding. The full text of this document is available on the Commission's website Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW, Washington, DC 20554.

List of Subjects in 47 CFR Part 64

Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02-25568 Filed 10-7-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02-2149, MB Docket No. 02-101, RM-10429]

Digital Television Broadcast Service; Reliance, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Young Broadcasting of Sioux Falls, Inc., licensee of station KPLO-TV, substitutes DTV channel 13 for DTV channel 14 at Reliance, South Dakota. See 67 FR 34670, May 15, 2002. DTV channel 13 can be allotted to Reliance, South Dakota, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 43-57-57 N. and 99-36-11 W. with a power of 40, HAAT of 338 meters and with a DTV service population of 53 thousand. With this action, this proceeding is terminated.

DATES: Effective October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02-101, adopted September 4, 2002, and released September 10, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

1. Section 73.622(b), the Table of Digital Television Allotments under South Dakota, is amended by removing DTV channel 14 and adding DTV channel 13 at Reliance.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02-25570 Filed 10-7-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 02-2282, MB Docket No. 02-131, RM-10440]

Digital Television Broadcast Service; Hammond, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KB Prime Media LLC, substitutes DTV channel 42 for NTSC channel 62+ at Hammond, Louisiana. See 67 FR 40632, June 13, 2002. DTV channel 42 can be allotted to Hammond, Louisiana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 29-58-57 N. and 89-57-09 W. with a power of 1000, HAAT of 308 meters and with a DTV service population of 1667 thousand. With this action, this proceeding is terminated.

DATES: Effective November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02-131, adopted September 13, 2002, and released September 19, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington,

DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Louisiana, is amended by removing TV channel 62+ at Hammond.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under Louisiana, is amended by adding Hammond, DTV channel 42.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02-25571 Filed 10-7-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 02-2215, MB Docket No. 02-94, RM-10423]

Digital Television Broadcast Service; Athens, GA

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of August 9, 2002, (67 FR 51769), a document changing the DTV Table of Allotments to reflect the substitution of DTV channel *12c for DTV channel *22 at Athens, Georgia. However, DTV channel *12c was inadvertently published without the "c" designation. This document corrects that amendment contained in section 73.622(b) of the Commission's Rules.

DATES: Effective September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION:

Background

The FCC published a document in the **Federal Register** of August 9, 2002, (67 FR 51769) removing DTV channel *22 and adding DTV channel *12c at Athens, Georgia. DTV channel *12 was inadvertently published in lieu of DTV channel *12c at Athens, Georgia. This correction removes DTV channel *12 and adds DTV channel *12c.

Need for Correction

As published, the final regulations contain an error, which may prove to be misleading, and needs to be clarified.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Georgia, is amended by removing DTV channel *12 and adding DTV channel *12c at Athens.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02-25572 Filed 10-7-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 02-2150, MB Docket No. 02-102, RM-10430]

Digital Television Broadcast Service; Florence, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Young Broadcasting of Sioux Falls, Inc., substitutes DTV channel 2 for DTV channel 25 at Florence, South Dakota. See 67 FR 34670, May 15, 2002. DTV channel 2 can be allotted to Florence in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 44-57-56 N. and 97-35-22 W. with a power of 3.7, HAAT of 243 meters and with a DTV

service population of 119 thousand. With this action, this proceeding is terminated.

DATES: Effective October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02-102, adopted September 4, 2002, and released September 10, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under South Dakota, is amended by removing DTV channel 25 and adding DTV channel 2 at Florence.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02-25573 Filed 10-7-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02-2148, MM Docket No. 01-302, RM-10333]

Digital Television Broadcast Service; Fort Wayne, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Indiana Broadcasting LLC,

licensee of station WANE-TV, substitutes DTV channel 31 for DTV channel 4 at Fort Wayne, Indiana. See 66 FR 65872, December 21, 2001. DTV channel 31 can be allotted to Fort Wayne, Indiana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 41-05-38 N. and 85-10-48 W. with a power of 82, HAAT of 253 meters and with a DTV service population of 792 thousand. Since the community of Fort Wayne, Indiana, is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01-302, adopted September 4, 2002, and released September 10, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Indiana, is amended by removing DTV channel 4 and adding DTV channel 31 at Fort Wayne.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02-25574 Filed 10-7-02; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020215032-2127 02; I.D. 092402A]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Readjustment to 2002 Quotas; Commercial Quota Adjustments for Maryland and Virginia

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

ACTION: Commercial quota adjustments.

SUMMARY: NMFS announces adjustments to the 2002 commercial Atlantic bluefish quota for the States of Maryland and the Commonwealth of Virginia. This action complies with regulations implementing the Fishery Management Plan for Atlantic Bluefish (FMP), which require that landings in excess of a state's commercial quota be deducted from that state's quota the following year. The FMP also allows two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), to transfer or combine part or all of their annual commercial quota. The Regional Administrator must consider the criteria set forth in § 648.160(f)(1) in the evaluation of requests for quota transfers or combinations. The public is advised that quota adjustments have been made and is informed of the revised quotas for the affected states.

DATES: Effective October 7, 2002 through December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Myles A. Raizin, Fishery Policy Analyst, 978-281-9104.

SUPPLEMENTARY INFORMATION:

Regulations implementing Atlantic bluefish management measures are found at 50 CFR part 648, subpart J. The regulations require annual specification of a commercial quota that is apportioned among the Atlantic coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.160. The final specifications for the 2001 Atlantic bluefish fishery set a total commercial quota equal to 9.58 million lb (4.35 million kg) (66 FR 23625; May 9, 2001). Maryland and Virginia's quota shares were calculated to be 287,662 lb (130,518 kg) and

1,138,412 lb (516,521 kg), respectively. However, in 2001, both Maryland and Virginia transferred a portion of their quotas to other states, leaving their final adjusted quotas at 87,662 lb (39,774 kg) for Maryland and 738,412 lb (335,033 kg) for Virginia.

Section 648.160(e)(2) provides that all landings in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota must be deducted from that state's annual quota for the following year.

Based on dealer reports and other available information, NMFS has determined that, in 2001, the State of Maryland landed 130,451 lb (59,188 kg) and the Commonwealth of Virginia landed 790,477 lb (358,655 kg) of bluefish causing overages of 42,789 lb (19,414 kg) and 52,065 lb (23,623 kg) for Maryland and Virginia, respectively.

On June 6, 2002, final specifications for the 2002 commercial Atlantic bluefish became effective (67 FR 38909). Total commercial harvest was specified at 10.5 million lb (4.76 million kg). Maryland and Virginia's shares of the quota were 315,189 lb (142,967 kg) and 1,247,348 lb (565,787 kg), respectively. Consistent with the regulations regarding the disposition of overages, the 2002 Atlantic bluefish commercial quota for Maryland is hereby reduced by 42,789 lb (19,414 kg) to 272,400 lb (123,593 kg). The 2002 Atlantic bluefish commercial quota for Virginia is hereby reduced by 52,065 lb (23,623 kg) to 1,195,283 lb (541,833 kg).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service
[FR Doc. 02-25460 Filed 10-7-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304-1304-01; I.D. 100302A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component 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 directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2002 Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 3, 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 Groundfish 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 50 CFR part 679.

The 2002 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA is 1,685 metric tons (mt) as established 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 16, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,385 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

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 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 § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 3, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 02-25621 Filed 10-3-02; 3:17 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 67, No. 195

Tuesday, October 8, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1710 and 1721

RIN 0572-AB79

Extensions of Payments of Principal and Interest

AGENCY: Rural Utilities Service, USDA.
ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulation on extensions of payments of principal and interest, to include a maximum interest rate a RUS Borrower can charge on deferments for programs relating to consumer loans. The maximum interest rate will not be more than 300 basis points above the average interest rate on the note(s) being deferred. This limit would allow the Borrower to offset all or part of the administrative costs involved. In addition, this proposed rule sets forth the procedure for RUS Borrowers to request a Section 12(a) extension for distributed generation projects. These changes are intended to clarify the procedures Borrowers are to follow when requesting extensions of payments of principal and interest.

DATES: Written comments must be received by RUS or carry a postmark or equivalent no later than December 9, 2002.

ADDRESSES: Written comments should be addressed to Al Rodgers, Deputy Assistant Administrator, Electric Program, U.S. Department of Agriculture, Rural Utilities Service, Room 4037 South Building, Stop 1560, 1400 Independence Avenue, SW., Washington, DC 20250-1560. Telephone (202) 720-9547. RUS requires a signed original and three copies of all comments (7 CFR Part 1700). All comments received will be made available for inspection in room 4037 South Building during regular business hours.

FOR FURTHER INFORMATION CONTACT: Gail P. Salgado, Management Analyst, Rural Utilities Service, Electric Program, Room 4024, South Building, Stop 1560, 1400 Independence Avenue, SW., Washington, DC 20250-1560. Telephone (202) 205-3660.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeals procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS electric program provides loans and loan guarantees to Borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. Small entities are not subjected to any requirements which are not applied equally to large entities. RUS Borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which RUS intends to request approval from

the Office of Management and Budget (OMB).

Comments on this notice must be received by December 9, 2002.

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 will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection 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.

Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, DC 20250-1522.

Title: Extensions of Payments of Principal and Interest.

OMB Control Number: 0572-0123.

Type of Request: Revision of a currently approved collection.

Abstract: 7 CFR 1721, subpart B, sets forth the procedures for Borrowers to follow when requesting extensions of principal and interest.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.34 hours per response.

Respondents: Not-for-profit institutions, business or other for-profit.

Estimated Number of Respondents: 94.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 816.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690-1078.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Unfunded Mandates

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

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325, telephone number (202) 512-1800.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled, "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034) advising that RUS loans and loan guarantees are not covered by Executive Order 12372.

Background

On January 9, 2001, at 66 FR 1604, the Rural Utilities Service (RUS) published a proposed rule, 7 CFR Part 1721—Extensions of Payments of Principal and Interest, which proposed adding procedures and conditions under which Borrowers may request extensions of the payment of principal and interest. RUS Bulletins 20-5:320-2 and 20-23, which previously addressed extensions of principal and interest, were rescinded with the publication of the subsequent final rule, which was published in the **Federal Register** on January 4, 2002, at 67 FR 484. RUS received comments on the proposed rule from the National Rural Electric Cooperative Association (NRECA) recommending RUS consider allowing a Borrower to defer principal payments to finance properly coordinated distributed generation

projects. RUS advised in the final rule that RUS agrees with NRECA's recommendation but that the comment could not be considered for the regulation under consideration and that it would be deferred for a subsequent proposal. RUS now proposes to set forth procedures and conditions under which RUS Borrowers may request extensions of principal payments to finance distributed generation projects. As proposed, the project(s) must be owned by the RUS Borrower or the customer who borrows deferred RUS loan funds from the RUS Borrower.

RUS recognizes that distributed generation projects using either renewable or non-renewable energy sources properly coordinated and dispersed throughout rural electric utility service territories have the potential to enhance rural development through the creation of new jobs to install, operate, and maintain systems.

Distributed generation projects strategically dispersed throughout a rural electric utility service area, near specific customers or load centers, can also be a cost-effective means of providing reliable electric service to distribution consumers. However, randomly installed distributed generation projects have the potential to negatively impact the electric system and to increase overall system costs, especially on rural electric distribution systems. RUS proposes to minimize these potential negative impacts by limiting individual unit capacity of consumer owned distributed generation projects eligible for this program. Distributed generation projects to be owned by distribution Borrowers would not be limited as proposed because such projects are expected to receive a more coordinated planning effort to benefit the entire system membership.

The intent of RUS in promulgating this proposed regulation is to create a readily available source of locally controlled financing to develop distributed generation projects, that, like the already eligible renewable energy projects, are designed and administered to be in the best interest of the member of the distribution Borrower, the Borrower requesting the deferment, and the local community without impairing RUS loan feasibility and security at either the power supply or distribution level.

Renewable energy is considered a type of distributed generation. Additional eligibility purposes for renewable energy is included in 7 CFR 1721.104(c).

RUS also proposes to establish a maximum interest rate a RUS Borrower can charge on deferments for programs

relating to consumer loans. The maximum interest rate will not be more than 300 basis points above the average interest rate on the note(s) being deferred. This limit would be used to offset all or part of the Borrower's administrative costs.

7 CFR 1710 is being amended to add a new definition of "Distributed generation" and to remove and replace the definitions of "Off-grid renewable energy system," "On-grid renewable energy system," and "Renewable energy system."

List of Subjects

7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1721

Electric power, Loan programs—energy, Rural areas.

For the reasons set forth in the preamble, RUS proposes to amend 7 CFR chapter XVII as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 continues to read:

Authority: 7 U.S.C. 901 *et seq.*; 1921 *et seq.*, and 6941 *et seq.*

Subpart A—General

2. Amend § 1710.2(a) by adding a new definition of "Distributed generation" in alphabetical order and by revising definitions of "Off-grid renewable energy system," "On-grid renewable energy system," and "Renewable energy system" as follows:

§ 1710.2 Definitions and rules of construction.

* * * * *

Distributed generation is the generation of electricity by a sufficiently small electric generating system as to allow interconnection of the electric generating system near the point of service at distribution voltages or customer voltages including points on the customer side of the meter. A distributed generating system may be operated in parallel or independent of the electric power system. A distributed generating system may be fueled by any source, including but not limited to renewable energy sources. A distributed generation project may include one or more distributed generation systems.

* * * * *

Off-grid renewable energy system is a renewable energy system not interconnected to an area electric power system.

On-grid renewable energy system is a renewable energy system interconnected to an area electric power system (EPS) through a normally open or normally closed device. It can be interconnected to the EPS on either side of a consumer's meter.

* * * * *

Renewable energy system is an energy conversion system fueled from any of the following energy sources: solar, wind, hydropower, biomass, or geothermal. Any of these energy sources may be converted to heat or electricity. Energy from bio-mass may be converted from any organic matter available on a renewable basis, including dedicated energy crops and trees, agricultural food and feed crops, agricultural crop wastes and residues, wood wastes and residues, aquatic plants, animal wastes, municipal wastes, and other waste materials.

* * * * *

PART 1721—POST LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

3. The authority citation for part 1721 continues to read:

Authority: 7 U.S.C. 901 et seq.; 1921 et seq., and 6941 et seq.

Subpart B—Extensions of Payments of Principal and Interest

4. Amend § 1721.103 by adding paragraph (c) to read as follows:

§ 1721.103 Policy.
* * * * *

(c) The maximum interest rate a RUS Borrower can charge on deferments for programs relating to consumer loans, e.g., energy resource conservation (ERC) program, contribution-in-aid of construction (CIAC), etc., will not be more than 300 basis points above the average interest rate on the note(s) being deferred. For example, if the RUS Borrower's average interest rate on the note(s) being deferred is 5 percent, the RUS Borrower can charge a maximum interest rate of 8 percent.

- 5. Amend § 1721.104 by:
 - a. Revising paragraph (c)(1)(ii);
 - b. Redesignating paragraph (d) as (e);and
- c. Adding a new paragraph (d).

This revision and addition are to read as follows:

§ 1721.104 Eligible purposes.
* * * * *

- (c) * * *

- (1) * * *
- (ii) Electric power system interfaces;
* * * * *

(d) Deferments for distributed generation projects.

(1) A Borrower may request that RUS defer principal payments to enable the Borrower to finance distributed generation projects. Amounts deferred under this program can be used to cover costs to install all or part of a distributed generation system that:

- (i) The Borrower will own and operate, or
- (ii) The consumer owns, provided the system owned by the consumer does not exceed 5KW.

(2) A distributed generation project may include one or more individual systems.
* * * * *

7. Amend § 1721.105 by redesignating paragraph (d) as (e) and by adding a new paragraph (d) to read as follows:

§ 1721.105 Application documents.
* * * * *

(d) Deferments for distributed generation projects. A Borrower requesting principal deferments for distributed generation projects must submit the following information and approval is also subject to any applicable terms and conditions of the Borrower's loan contract, mortgage, or indenture:

(1) A letter from the Borrower's General Manager requesting an extension of principal payments for the purpose of financing distributed generation projects and describing the details of the project, and

(2) A copy of the board resolution establishing the distributed generation projects program.
* * * * *

8. Amend § 1721.106 by revising the heading of paragraph (b) to read as follows:

§ 1721.106 Repayment of deferred payments.
* * * * *

(b) Deferments relating to the ERC loan program, renewable energy project(s), distributed generation project(s), and the contribution(s)-in-aid of construction.
* * * * *

Dated: September 10, 2002.
Hilda Gay Legg,
Administrator, Rural Utilities Service.
[FR Doc. 02-25209 Filed 10-7-02; 8:45 am]
BILLING CODE 3410-15-P

**DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration**

14 CFR Part 39

[Docket No. 2001-NM-341-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 757-200 and 200PF Series Airplanes Equipped With Pratt and Whitney PW2000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires inspections, adjustments, and functional checks of the engine thrust reverser system; and modification of the engine thrust reverser directional control valve. The existing AD also requires installation of an additional thrust reverser locking feature and periodic functional tests of the locking feature following installation. This action would reduce the applicability in the existing AD. The actions specified by this AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

DATES: Comments must be received by November 22, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-341-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-341-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-341-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-341-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On January 3, 1994, the FAA issued AD 94-01-10, amendment 39-8792 (FR 59 FR 4558, February 1, 1994), applicable to certain Boeing Model 757 series airplanes, to require inspections, adjustments, and functional checks of the engine thrust reverser system; and modification of the engine thrust reverser directional control valve. That action also requires installation of an additional thrust reverser locking feature and periodic functional tests of the locking feature following installation. That action was prompted by results of a safety review of the thrust reverser system on these airplanes. The requirements of that AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 94-01-10, we have determined that the applicability in that AD (Boeing Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines) should be limited to Boeing Model 757-200 and -200PF series airplanes equipped with Pratt and Whitney PW2000 series engines. This determination was made because the intervals for the repetitive inspections of the engine thrust reverser system for Model 757-300 series airplanes, as required by the existing AD, have been included as a certification maintenance requirement in the airplane certification program.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 94-01-10 to continue to require the same actions specified in the existing AD, and would reduce the applicability.

Cost Impact

Since this proposed AD would merely delete airplanes from the applicability of the proposed rule, it would add no additional costs, and would require no additional work to be performed by affected operators. The current costs associated with this amendment are reiterated below for the convenience of affected operators:

The FAA estimates that 270 airplanes of U.S. registry would be affected by this proposed AD.

It will take approximately 624 work hours per airplane to accomplish the modification required by AD 94-01-10, at an average labor rate of \$60 per work

hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the modification currently required by this AD is estimated to be \$37,440 per airplane.

It will take approximately 1 work hour per airplane to accomplish the periodic functional tests required by AD 94-01-10, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the periodic functional tests currently required by this AD on U.S. operators is estimated to be \$60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8792 (FR 59 FR 4558, February 1, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2001–NM–341–AD. Revises AD 94–01–10, Amendment 39–8792.

Applicability: Model 757–200 and –200PF series airplanes equipped with Pratt and Whitney PW2000 series engines, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane, accomplish the following:

Inspections/Adjustments/Functional Checks/Modification

(a) Within 14 days after September 16, 1991 (the effective date of AD 91–20–09, amendment 39–8043), accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Accomplish both paragraphs (a)(1)(i) and (a)(1)(ii) of this AD:

(i) Inspect the thrust reverser Directional Control Valve (DCV) assemblies of both engines to determine the solenoid-driven pilot valve's part number, in accordance with Boeing Alert Service Bulletin 757–78A0027, dated September 9, 1991.

(A) If any DCV has a suspect pilot valve as specified in the service bulletin, prior to further flight, replace the DCV with a DCV that has a part number of a non-suspect solenoid-driven pilot valve, in accordance with the service bulletin.

(B) If a DCV has a non-suspect solenoid-driven pilot valve as specified in the service bulletin, that pilot valve does not need to be replaced.

(ii) Perform all tests and inspections of the engine thrust reverser control and indication

system on both engines in accordance with Boeing Service Bulletin 757–78–0025, dated September 9, 1991. Prior to further flight, correct any discrepancy found in accordance with the service bulletin.

(2) Accomplish paragraph (a)(1) of this AD on one engine's thrust reverser and deactivate the other engine's thrust reverser, in accordance with Section 78–31–1 of Boeing Document D630N002, "Boeing 757 Dispatch Deviation Guide," Revision 8, dated January 15, 1991.

(b) Within 24 days after September 16, 1991, the requirements of paragraph (a)(1) of this AD must be accomplished on both engines' thrust reverser systems.

(c) Repeat the tests and inspections specified in paragraph (a)(1)(ii) at intervals not to exceed 3,000 flight hours, and prior to further flight following any maintenance that disturbs the thrust reverser control system. Prior to further flight, correct any discrepancy found in accordance with Boeing Service Bulletin 757–78–0025, dated September 9, 1991.

Installation/Functional Test

(d) Within 5 years after March 3, 1994 (the effective date of AD 94–01–10, amendment 39–8792), install an additional thrust reverser system locking feature (sync lock installation), in accordance with Boeing Service Bulletin 757–78–0028, Revision 1, dated October 29, 1992, or Revision 2, dated January 14, 1993.

(e) Within 1,000 hours time-in-service after installing the sync lock required by paragraph (d) of this AD (either in production or by retrofit), or within 1,000 hours time-in-service after March 3, 1994, whichever occurs later; and thereafter at intervals not to exceed 1,000 hours time-in-service: Perform functional tests of the sync lock in accordance with the "Thrust Reverser Sync Lock Integrity Test" procedures specified below. If any discrepancy is found during any test, prior to further flight, correct it in accordance with procedures described in the Boeing 757 Maintenance Manual.

"Thrust Reverser SYNC Lock Integrity Test

1. General

A. Use this procedure to test the integrity of the thrust reverser sync locks.

2. Thrust Reverser Sync Lock Test

A. Prepare for the Thrust Reverser Sync Lock Test.

(1) Open the AUTO SPEEDBRAKE circuit breaker on the overhead circuit breaker panel, P11.

(2) Do the steps that follow to supply power to the thrust reverser system:

(a) Make sure the thrust levers are in the idle position.

Caution: Do Not Extend the Thrust Reverser While the Core Cowl Panels Are Open. Damage to the Thrust Reverser and Core Cowl Panels Can Occur.

(b) Make sure the thrust reverser halves are closed.

(c) Make sure the core cowl panels are closed.

(d) Put the EEC MAINT POWER switch or the EEC POWER L and EEC POWER R switches to the ALTN position.

(e) For the left engine:

(1) Put the EEC MAINT CHANNEL SEL L switch to the AUTO position.

(2) Put the L ENG fire switch to the NORM position.

(f) For the right engine:

(1) Put the EEC MAINT CHANNEL SEL R switch to the AUTO position.

(2) Put the R ENG fire switch to the NORM position.

(g) Make sure the EICAS circuit breakers (6 locations) are closed.

Warning: The Thrust Reverser Will Automatically Retract if the Electrical Power to the EEC/Thrust Reverser Control System Is Turned Off or if the EEC Maint Power Switch Is Moved to the Norm Position. The Accidental Operation of the Thrust Reverser Can Cause Injury to Persons or Damage to Equipment Can Occur.

(h) Make sure these circuit breakers on the main power distribution panel, P6, are closed:

- (1) FUEL COND CONT L
- (2) FUEL COND CONT R
- (3) T/L INTERLOCK L
- (4) T/L INTERLOCK R
- (5) LEFT T/R SYNC LOCK
- (6) RIGHT T/R SYNC LOCK
- (7) L ENG ELECTRONIC ENGINE CONTROL ALTN PWR (if installed)
- (8) R ENG ELECTRONIC ENGINE CONTROL ALTN PWR (if installed)

(i) Make sure these circuit breakers on the overhead circuit breaker panel, P11, are closed:

- (1) AIR/GND SYS 1
- (2) AIR/GND SYS 2
- (3) LANDING GEAR POS SYS 1
- (4) LANDING GEAR POS SYS 2

(j) For the left engine, make sure these circuit breakers on the P11 panel are closed:

- (1) LEFT ENGINE PDIU
- (2) LEFT ENGINE THRUST REVERSER CONT/SCAV PRESS
- (3) LEFT ENGINE ELECTRONIC ENGINE CONTROL ALTN PWR (if installed)
- (4) LEFT ENGINE THRUST REVERSER PRI CONT
- (5) LEFT ENGINE THRUST REVERSER SEC CONT

(k) For the right engine, make sure these circuit breakers on the P11 panel are closed:

- (1) RIGHT ENGINE PDIU
- (2) RIGHT ENGINE THRUST REVERSER CONT/SCAV PRESS
- (3) RIGHT ENGINE ELECTRONIC ENGINE CONTROL ALTN PWR (if installed)
- (4) RIGHT ENGINE THRUST REVERSER PRI CONT
- (5) RIGHT ENGINE THRUST REVERSER SEC CONT

(l) Supply electrical power.

(m) Remove the pressure from the left (right) hydraulic system.

B. Do the Thrust Reverser Sync Lock Test.

(1) Move and hold the manual unlock lever on the center actuator on both thrust reverser sleeves to the unlock position.

(2) Make sure the thrust reverser sleeves did not move.

(3) Move the left (right) reverser thrust lever up and rearward to the idle detent position.

- (4) Make sure both thrust reverser sleeves move aft (approximately 0.15 to 0.25 inch).
- (5) Release the manual unlock lever on the center actuators.

Warning: Make Sure All Persons and Equipment Are Clear of the Area Around the Thrust Reverser. When You Apply Hydraulic Pressure the Thrust Reverser Will Extend and Can Cause Injuries to Persons or Damage to Equipment.

- (6) Pressurize the left (right) hydraulic system.
- (7) Make sure the thrust reverser extends.
- (8) Move the left (right) reverser thrust lever to the fully forward and down position to retract the thrust reverser.

C. Put the Airplane Back to its Usual Condition.

- (1) Remove hydraulic pressure.
- (2) Close the left and right fan cowls.
- (3) Close the AUTO SPEEDBRAKE circuit breaker on the P11 panel.
- (4) Remove electrical power if it is not necessary.

D. Repeat the Thrust Reverser Sync Lock Test on the other engine."

(f) Installation of the sync lock, as required by paragraph (d) of this AD, constitutes terminating action for the requirements of paragraphs (a) through (c) of this AD.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 91-20-09, amendment 39-8043; and AD 94-01-10, amendment 39-8792; are approved as alternative methods of compliance with the requirements of this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on October 1, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02-25604 Filed 10-7-02; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 50

[Docket Number 020919216-2216-01]

RIN 0607-AA37

Bureau of the Census Geographically Updated Population Certification Program

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: Following the 1970 decennial census and every decennial census thereafter, the Bureau of the Census (Census Bureau) has provided the opportunity for county, local, and tribal governments to obtain certified population and housing unit counts for areas in which their boundaries have changed from those used to tabulate the results of the immediately preceding decennial census. These changes might occur either as the result of newly created governmental units (incorporations), additions to existing governmental units (annexations), the combination of two existing governmental units (merger), or other circumstances. These governmental units are established by law for the purpose of implementing specified general-or special-purpose governmental functions; the certification process is available to both.

Most governmental units have legally established boundaries and names, and have officials (usually elected) who have the power to carry out legally prescribed functions, provide services for residents, and raise revenues. These are commonly referred to as general-purpose governmental units and typically include counties, boroughs, cities, towns, villages, townships, and federally recognized American Indian reservations. Special-purpose governmental units typically are limited to one function, such as school districts.

This update service was suspended on June 1, 1998, to accommodate the taking of the 2000 census and will resume in the fall of 2002. The Census Bureau is proposing this rule to reinstate the process by creating a centralized system for certifying population and housing counts and to establish a fee structure that accurately reflects the costs associated with this certification process. This service will be a permanent process, but one that will be temporarily suspended during future decennial censuses. Typically,

the Census Bureau will suspend this service, and direct its resources to the decennial census, for a total of five years—the two years preceding the decennial census, the decennial census year, and the two years following it. The Census Bureau will issue notices in the **Federal Register** announcing when it suspends and, in turn, resumes, the service.

DATES: Written comments must be submitted on or before November 7, 2002.

ADDRESSES: Please direct all written comments on this proposed program to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on this proposed action should be directed to Rodger V. Johnson, Population Distribution Branch, Population Division, U.S. Census Bureau, Room 2324, Federal Building 3, Washington, DC 20233, (301) 763-2419, by fax (301) 457-2481, or e-mail (rodger.v.johnson@census.gov).

SUPPLEMENTARY INFORMATION:

Background

The Census Bureau first began to certify decennial census population counts for updated governmental unit boundaries in 1972 in response to the request of local governments to establish eligibility for participation in the General Revenue Sharing Program, authorized under Public Law 92-152. At the time, the Census Bureau established a fee-based program, enabling governmental units with annexations to obtain updated decennial census population counts that included the population living in annexed areas. The Census Bureau also received funding from the U.S. Department of the Treasury to make those determinations for larger annexations that met prescribed criteria and for newly formed general-purpose governmental units. The General Revenue Sharing Program ended on September 30, 1986, but the certification program continued into 1988 with support from the Census Bureau. The program was suspended to accommodate the taking of the 1990 decennial census and resumed in 1992. The Census Bureau supported the program through fiscal year 1995 for cities with large annexations and through fiscal year 1996 for newly incorporated places. The program was continued on a fee-basis only until June 1, 1998, at which time it was suspended for the 2000 decennial census (see **Federal Register**, 63 FR 27706, May 20,

1998). At the time, it was stated that the program would resume in three years; however, resumption was delayed by continuing resource demands of the 2000 decennial census.

Although there is no legal requirement that the Census Bureau provide this service, there is a demand by governmental units for Census 2000 population and housing counts certified to reflect boundary updates or the formation of new governmental units dated after January 1, 2000 (the legally effective date for boundaries used in tabulating Census 2000). Title 13, Section 8, allows the Census Bureau to continue this program by providing certain statistical materials (certified population and housing counts) upon payment of costs for the service. The Census Bureau is the sole provider of this service obtained through the processing of individual Census 2000 enumeration records protected by the confidentiality restrictions of Title 13, United States Code (U.S.C.).

A geographically updated population certification from the Census Bureau confirms that an official population count is an accurate retabulation of the Census 2000 population as configured for the new boundaries. A population certification may be needed for many reasons. For example, general-purpose governments may be required by state law to produce a Census Bureau population certification for funds disbursement from their respective states, or federally sponsored programs may require or honor a Census Bureau population certification for program eligibility. Special-purpose governmental units also may need official certification of census population and housing counts for other purposes.

The Census Bureau will reinstate a fee-based program that will use current geographic and demographic programs to support customer requests. The proposed fee structure reflects variations in resources needed to meet customer requirements for certifications of standard governmental units, as listed later in this notice (see paragraph (c) under section 50.60, "Request for Certification"). To create a consistent process to meet the anticipated demand for the service, the Census Bureau is proposing an amendment to Title 15 CFR part 50:

- Add a new section 50.60 containing the Census Bureau's certification process.

- Establish a consistent fee structure. The fees will depend on the degree of geographic processing tasks required to complete the certification request and on the urgency of the request. There are

two types of fees, based upon whether the population certificate is generated through an annually scheduled geographic update process, or is expedited in order to meet customer needs. The annual and expedited certification fees further depend on whether or not additional geographic data must be acquired from the customer and reviewed, tracked, and processed. The lowest fee applies to customers whose geographic data have been collected as part of the annual geographic update process and whose schedules permit waiting until the annual processing has been completed. The highest fee applies to customers from whom additional geographic data must be acquired (over and above the normal annual process) and who also specify expedited processing.

- Require requests for certifications to contain information on Form BC-1869(EF), "Request for Geographically Updated Official Population Certificate." (See the Census Bureau's Web site, <<http://www.census.gov/mso/www/certification/>>.)

Administrative Procedure and Regulatory Flexibility Act

A notice of proposed rulemaking is not required by Title 5 U.S.C. 553, or any other law, for this rule of agency organization, procedure and practice that involves a matter relating to public property, loans, grants, benefits, or contracts. Accordingly, it is exempt from the notice and comment provisions of the Administrative Procedure Act under 5 U.S.C. 553(a)(2) and 5 U.S.C. 553(b)(A). Therefore, the analytical requirements of the Regulatory Flexibility Act are not applicable (5 U.S.C. 601, *et seq.*). As a result, a Regulatory Flexibility Analysis is not required and none has been prepared. However, this rule is being published as a proposed rule with an opportunity for public comment, because of the importance of the issues raised by this rulemaking.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications as that term is defined in Executive Order 12612.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork

Reduction Act (PRA), Title 44, U.S.C., Chapter 35, unless that collection of information displays a current Office of Management and Budget control number. This notice does not represent a collection of information and is not subject to the PRA's requirements. The form referenced in the rule, Form BC-1869(EF), will collect only information necessary to process a certification request. As such, it is not subject to the PRA's requirements (5 CFR 1320.3(h)(1)).

List of Subjects in 15 CFR Part 50

Census data, Geographic updates, Population census, Seals and insignia, Statistics.

PART 50—SPECIAL SERVICES AND STUDIES BY THE BUREAU OF THE CENSUS

1. The authority citation for 15 CFR part 50 continues to read as follows:

Authority: Sec. 3, 49 Stat. 293, as amended; and 15 U.S.C. 192a. Interprets or applies sec. 1, 40 Stat. 1256, as amended; sec. 1, 49 Stat. 292; sec. 8, 60 Stat. 1013, as amended; 15 U.S.C. 192, 189a; and 13 U.S.C. 8.

2. Add section 50.60 to read as follows:

§ 50.60 Request for Certification

(a) *Certification Process.* Upon request, the Census Bureau certifies population and housing counts of standard governmental units to reflect boundary updates, including new incorporations, annexations, mergers, and so forth. The Census Bureau will produce a certificate, that is, a signed statement by a Census Bureau official attesting to the authenticity of the certified Census 2000 population and housing count to reflect updates to the legal boundaries of governmental units after those in effect for Census 2000. This service will be a permanent process, but one that will be temporarily suspended during future decennial censuses. Typically, the Census Bureau will suspend this service, and direct its resources to the decennial census, for a total of five years—the two years preceding the decennial census, the decennial census year, and the two years following it. The Census Bureau will issue notices in the **Federal Register** announcing when it suspends and, in turn, resumes, the service.

(1) The Census Bureau charges customers a preset fee for this service according to the amount of work involved in compiling the population and housing counts, as determined by the resources expended to meet customer requirements and the set cost

of the product (one certificate). Certification fees may increase somewhat if the customer requests additional original certificates. Each additional certificate costs \$35.00. Certification prices are shown in the following table:

DESCRIPTION AND ESTIMATED FEE	
Standard governmental units	Estimated fee
Annual Certification	\$693 to \$1,799.
Expedited Certification	\$1,530 to \$9,075.

(2) [Reserved]

(b) *Description of Certification Types.* The Census Bureau will process requests for population certificates for standard governmental units, in accordance with the Census Bureau's annual certification schedule or under an expedited certification arrangement. The boundaries for standard governmental units are regularly and customarily updated between decennial censuses by the Census Bureau's geographic support system. These governmental units include a variety of legally defined general- and special-purpose governmental units, including counties and statistically equivalent entities, minor civil divisions, incorporated places, consolidated cities, federally recognized American Indian reservations, and school districts. A complete list of entities is defined in paragraph (c) of this section.

(1) *Annual Certification.* Annual population and housing certification is available around October 1 of each calendar year to new or existing governmental units that reported legal boundary updates in the Census Bureau's annual Boundary and Annexation Survey. In accordance with reporting requirements of this survey, the legally effective dates of the boundary updates may not be later than January 1 of the calendar year. These certifications are available through September of the following year.

(i) The annual certification process also is available to standard governmental units that are not in the Boundary and Annexation Survey of that year. Governmental units electing participation in this process must draft the legal boundary updates upon Census Bureau-supplied maps. The legally effective dates of the boundaries may not be later than January 1 of the calendar year. The Census Bureau must receive the census maps annotated with the legally certified boundaries and associated address ranges by April 1 of the same calendar year. The Census Bureau will determine that the legal

boundary updates are acceptable by verifying that the information is complete, legible, and usable, and that the legal boundaries on the maps have been attested by the governmental unit as submitted in accordance with state law or tribal authority.

(ii) [Reserved]

(2) *Expedited Certification.* (i) Expedited certification will be available where the customer requests any of the following:

(A) Certification of boundary updates legally effective after January 1 of the current calendar year; or

(B) Certification of boundary updates reported to the Census Bureau after April 1 of the current calendar year; or

(C) Certification of boundary updates by the Census Bureau before October 1 of the current calendar year.

(ii) Governmental units electing participation in this option must draft the legal boundary updates upon Census Bureau-supplied maps. To allow sufficient processing time, the Census Bureau must receive acceptable census maps annotated with the legally certified boundaries and associated address ranges no later than three months before the date requested by the customer to receive the population certificate. The Census Bureau will determine that the legal boundary updates are acceptable by verifying that the information is complete, legible, and usable, and that the legal boundaries on the maps have been attested as submitted in accordance with state law or tribal authority.

(c) *List of Standard Governmental Units.* The following is a list of the standard governmental units eligible for the Geographically Updated Population Certification Program:

(1) Federally recognized American Indian reservations and off-reservation trust land entities [tribal government]; this includes a reservation designated as a colony, community, Indian community, Indian village, pueblo, rancheria, reservation, reserve, and village.

(2) Counties and statistically equivalent entities, including the following: Counties in 48 states; boroughs, municipalities, and census areas in Alaska (state official); parishes in Louisiana; and municipios in Puerto Rico.

(3) Minor civil divisions as recognized in Census 2000 in the following 28 states: Arkansas, Connecticut, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania,

Rhode Island, South Dakota, Vermont, Virginia, West Virginia, and Wisconsin.

(4) Incorporated places, including the following: boroughs in Connecticut, New Jersey, and Pennsylvania; cities in 49 states and the District of Columbia; cities, boroughs, and municipalities in Alaska; towns in 30 states (excluding towns in New England, New York, and Wisconsin, which are minor civil divisions); and villages in 20 states.

(5) Consolidated cities.

(6) School districts.

(d) *Non-Standard Certifications.*

Certifications for population and housing counts of non-standard geographic areas or of individual census blocks are not currently available under this program but will be announced under a separate notice at a later date.

(e) *Submitting Certification Requests.* Requests for certifications should be submitted on Form BC-1869(EF), Request for Geographically Updated Official Population Certification, to the Census Bureau by fax, (301) 457-4714, or by e-mail, MSO.certify@census.gov. Form BC-1869(EF) will be available on the Census Bureau's Web site at: <http://www.census.gov/mso/www/certification>. A letter or e-mail communication requesting the service without Form BC-1869(EF) will be accepted only if it contains the information necessary to complete a Form BC-1869(EF).

Dated: October 1, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-7392-2]

Historic Area Remediation Site (HARS)-Specific Polychlorinated Biphenyl Worm Tissue Criterion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing today to modify the designation of the Historic Area Remediation Site (HARS) to establish a HARS-specific worm tissue polychlorinated biphenyl (PCB) criterion of 113 parts per billion (ppb) for use in determining the suitability of proposed dredged material for use as Remediation Material. This amendment to the HARS designation would

establish a pass/fail criterion for evaluating PCBs in worm tissue from bioaccumulation tests performed on dredged material proposed for use at the HARS as Remediation Material. This value would remain in effect until after EPA and the U.S. Army Corps of Engineers (USACE) complete their review of the 2002 HARS human health scientific peer review comments, conduct and respond to the comments on the scientific peer review on the ecological proposal, and revise, as necessary, the process used to evaluate the suitability of dredged material proposed for use as Remediation Material at the HARS for all contaminants of concern in accordance with the September 27, 2000 Memorandum of Agreement between EPA and the USACE.

Among other things, the September 27, 2000 MOA established an interim guidance value of 113 ppb for PCBs in the tissues of bioassayed worms, to be considered when determining whether proposed dredged material from the New York/New Jersey Harbor is acceptable for placement at the HARS. At the time of the MOA, the agencies agreed that, while the peer review was not complete, the science review warranted the implementation of this interim change. The September 2000 MOA selected PCBs from the other contaminants because PCBs were specifically mentioned in the HARS designation. This interim change is designed to keep remediation of the HARS current with the latest scientific information concerning PCBs.

Upon signing the MOA, EPA withdrew its concurrence (given prior to the MOA) for the U.S. Gypsum

Corporation to place dredged material at the HARS as Remediation Material. U.S. Gypsum brought suit against the USACE and EPA, and in a July 10, 2002 decision, Judge Jed Rakoff of the U.S. District Court, Southern District of New York, held that the announcement of the 113 ppb interim value in the MOA was *de facto* rulemaking that should have been the subject of public notice and comment. This rulemaking is intended to address the court's concerns.

DATES: *Comments:* Comments must be received by November 7, 2002.

Public Hearings: The public hearing dates are as follows:

1. October 28, 2002, at 7:00 P.M., Monmouth Beach, New Jersey.
2. October 29, 2002, at 2:00 P.M., New York, New York.

ADDRESSES: *Comments:* Comments may be submitted by mail or electronically as follows: 1. By mail: Submit written comments on this notice to: Mr. Douglas Pabst, Team Leader, Dredged Material Management Team, U.S. Environmental Protection Agency Region 2, 290 Broadway, New York, NY 10007-1866 (E-mail pabst.douglas@epa.gov) To ensure proper identification of your comments, include in the subject line the name, date and **Federal Register** citation of this notice.

2. Electronically: Submit your comments electronically to: pabst.douglas@epa.gov Electronic comments must be submitted as an ASCII or WordPerfect file avoiding the use of special characters and any form of encryption. Comments will also be accepted on disks in WordPerfect or ASCII file format sent or delivered to the addresses above. All comments and data

in electronic form must be identified by the name, date and **Federal Register** citation of this notice. No confidential business information should be sent via e-mail.

Public Hearings: The public hearing locations are:

1. Monmouth Beach, New Jersey: Monmouth Beach Municipal Auditorium, 22 Beach Road, Monmouth Beach, New Jersey, 07750.
2. New York City, New York: Room 27D, EPA Region 2, 290 Broadway New York, New York 10007-1866.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Pabst, Team Leader, Dredged Material Management Team, U.S. Environmental Protection Agency Region 2, 290 Broadway, New York, NY 10007-1866 (E-mail pabst.douglas@epa.gov) (212) 637-3797.

SUPPLEMENTARY INFORMATION:

General Information

I. Regulated Entities

Entities potentially affected by this action include those who might have sought or will seek permits to place dredged material into ocean waters at the HARS for purpose of remediation, under the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* (hereinafter referred to as the MPRSA). The rule would primarily be of relevance to entities in the New York-New Jersey Harbor and surrounding area seeking permits from the USACE to place Remediation Material at the HARS, as well as the USACE itself. Potentially affected categories and entities seeking to use the HARS include:

Category	Examples of potentially affected entities
Industry	Ports in NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material to be placed at the HARS. Marinas in the NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material to be placed at the HARS. Shipyards in the NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material to be placed at the HARS. Berth owners in the NY/NJ Harbor and surrounding area seeking MPRSA permits for dredged material to be placed at the HARS.
State/local/tribal governments	Local governments owning ports or berths in the NY/NJ Harbor and surrounding area seeking MPRSA permits for dredged material to be placed at the HARS.
Federal	US Army Corps of Engineers for its proposed dredging projects in NY/NJ Harbor and surrounding areas to be placed at the HARS. Federal agencies seeking MPRSA permits for dredged material from NY/NJ Harbor and surrounding areas to be placed at the HARS.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not

listed in the table could also be affected. To determine whether your organization is affected by this action, you should carefully consider whether your organization is subject to the requirement to obtain an MPRSA permit in accordance with the Purpose and

Scope provisions of 40 CFR 220.1, and you wish to use the site subject to today's proposal. If you have any questions regarding applicability of this action to a particular entity, please consult the person listed in the

preceding **FOR FURTHER INFORMATION CONTACT** section.

Other entities potentially affected by today's proposal would include commercial and recreational fishing interests using New York Bight Apex fishing and shellfish grounds. However, by establishing a pass/fail interim PCB tissue criterion that is approximately 75 percent lower than the previously established 400 ppb worm tissue guideline for remediation of areas adversely impacted by historic disposal activities (see discussion below), any effects of today's proposal on fishery and shellfish resources would be expected to be positive.

II. Background

In 1972, the Congress of the United States enacted the MPRSA to address and control the dumping of materials into ocean waters. Title I of MPRSA authorized EPA (and the USACE in the case of dredged material) to regulate dumping in ocean waters. Since the MPRSA was enacted, and through its subsequent amendments (including the Ocean Dumping Ban Act of 1988, which prohibited ocean dumping of sewage sludge and industrial waste), dumping in the New York Bight has been dramatically reduced.

Regulations implementing the MPRSA are set forth at 40 CFR Parts 220 through 229. With few exceptions, the MPRSA prohibits the transportation of material from the United States for the purpose of ocean dumping except as may be authorized by a permit issued under the MPRSA. The MPRSA divides permitting responsibility between EPA and the USACE. Under Section 102 of the MPRSA, EPA has responsibility for issuing permits for all materials other than dredged material (e.g., fish wastes, burial at sea). Under Section 103 of the MPRSA, the Secretary of the Army has the responsibility for issuing permits for the ocean dumping of dredged material. This permitting authority has been delegated to the USACE. Determinations to issue Section 103 MPRSA permits for dredged material are subject to EPA review and concurrence.

Section 102(c) of the MPRSA also provides that EPA shall designate recommended times and sites for ocean dumping, and Section 103(b) further provides that the USACE shall use such EPA designated sites to the maximum extent feasible. EPA's ocean dumping regulations provide that EPA's designation of an ocean dumping site is accomplished by promulgation of a site designation in 40 CFR Part 228 specifying the site. On October 1, 1986, the Administrator delegated the authority to designate/de-designate

ocean dumping sites for dredged material to the Regional Administrator of the Region in which the site is located. In accordance with that authority, EPA Region 2 designated the HARS in September 1997 for placement of dredged material suitable for use as Material for Remediation (40 CFR 228.15(d)(6) (62 FR 46142)). Pursuant to that designation, dredged material proposed for use at the HARS must be determined to be suitable for use as Remediation Material. Remediation Material is defined as uncontaminated dredged material (i.e., dredged material that meets current Category I standards and will not cause significant undesirable effects including through bioaccumulation).

The designation ensured that material be selected so that it will not cause significant undesirable effects including through bioaccumulation or unacceptable toxicity in accordance with 40 CFR 227.6. The HARS was designated for continuing use until EPA determines that the PRA (Primary Remediation Area: a nine square nautical mile area to be remediated) has been sufficiently capped with at least 1 meter of the Material for Remediation.

The HARS is being managed to reduce impacts of historical disposal activities at the site to acceptable levels (in accordance with 40 CFR 228.11 (c)). The HARS is being remediated with uncontaminated dredged material (i.e., dredged material that meets current Category I standards and will not cause significant undesirable effects including through bioaccumulation) (hereinafter referred to as "the Material for Remediation" or "Remediation Material").

On September 27, 2000, EPA and the U.S. Army Corps of Engineers (USACE) entered into a Memorandum Of Agreement (MOA) that announced a schedule and a process by which EPA and USACE would review the science and the guidelines used in the evaluation of dredged material proposed for placement as Remediation Material at the HARS. Specifically, the Agencies committed to the shared objective of completing the scientific peer review process, initiated by EPA, and responding to the input from peer review and the public.

EPA is proposing today to modify the HARS designation (40 CFR 228.15(d)(6)) to establish a HARS-specific worm tissue PCB criterion of 113 ppb for dredged material proposed for use as Remediation Material, pursuant to 40 CFR 228.10 and 228.11(c). It should be noted that MPRSA site designation does not constitute or imply EPA's approval of actual placement of material at the

site. Before placement of the Material for Remediation at the HARS may commence, the USACE must evaluate permit applications according to EPA's Ocean Dumping Regulations and obtain EPA's concurrence.

III. Need To Establish a HARS-Specific Tissue PCB Criterion

The need for remediating the HARS is described in detail in the HARS SEIS (EPA 1997a), associated proposed (62 FR 26267) and final (62 FR 46142) rulemaking, and the Response to Comments on the proposed rule (EPA, 1997b). In summary, the proposal to terminate and de-designate the MDS, and simultaneously redesignate the site and surrounding degraded areas as the HARS, is amply supported by the presence of toxic effects in the HARS (a Category III sediment characteristic), dioxin bioaccumulation exceeding Category I levels in worm tissue collected from the HARS (a Category II sediment characteristic), National Oceanic and Atmospheric Administration (NOAA) ER-L/ER-M exceedances in some HARS sediments, and PCB/TCDD contamination in area lobster stocks. While it is impossible to quantify how much of New York Bight Apex contamination is the direct result of past dredged material disposal, other ocean dumping activities (e.g., former sewage sludge disposal at the 12-Mile Site), or other sources (e.g., via Hudson River plume or atmospheric deposition), the presence of these degraded sediments in the Apex is cause for concern.

Organisms living in or near these degraded surface sediments in near shore waters will be continually exposed to contaminants until the contaminants are buried by natural sedimentation, placement of Remediation Material, or otherwise isolated or removed. Exposed sediments can directly and indirectly impact benthic and pelagic organisms. Impacts to terrestrial organisms (including human beings) are also possible if the contaminants were to undergo trophic transfer.

NOAA tissue data from lobsters that were harvested in the New York Bight Apex in 1994 revealed that PCB concentrations in the hepatic tissue (tomalley) of the lobsters were above U.S. Food and Drug Administration consumption guidelines. It must be kept in mind that the lobsters analyzed in the NOAA study were harvested from wild stocks in the Apex, whose populations migrate seasonally through the region, including the HARS. Contamination of these animals cannot be definitively linked to specific areas of dredged

material disposal, to other past dumping activities, or to other pollution sources. Nor does the study indicate that human consumption of lobster muscle tissue (meat) presents health risks. However, the lobster study data do show that contaminants are being accumulated, and that concern about potential human-health risks is warranted. This contaminant data set complements other evidence of benthic contamination in the New York Bight Apex region.

The evaluative framework used to determine suitability of dredged material for use as Remediation Material at the HARS was developed in 1996 for the MDS and revised in 1998 for the HARS. It is a framework for assessing the potential for human health and ecological effects by comparing bioaccumulation test results to guidance values. These guidance values were derived from researching the best available literature at the time. The 1996 framework continued the use of a PCB guidance value of 400 ppb for worm tissue based on the Matrix approach defined in the 1981 USACE guidance: *Final Interpretive Guidance for Bioaccumulation of Petroleum Hydrocarbon, DDT, Cadmium, and Mercury in the New York Bight*.

In 1998, EPA began the peer review process specified in the New York/New Jersey Harbor Estuary Program (HEP) Comprehensive Conservation and Management Plan (CCMP). A panel of 11 scientific peer reviewers submitted comments pertaining to the HARS evaluative framework and guidance values. For PCBs and the other matrix values, peer reviewers expressed concerns regarding the relevance of the Matrix approach developed in 1981, and recommended evaluating PCBs and the other matrix values, using human health and ecological risk assessment procedures (USEPA, 2000).

On September 27, 2000, EPA and the U.S. Army Corps of Engineers (USACE) entered into a Memorandum Of Agreement (MOA) that announced a schedule and a process by which EPA and USACE would review the science and the guidelines used in the evaluation of dredged material proposed for placement as Remediation Material at the HARS. Specifically, the Agencies committed to the shared objective of completing the scientific peer review process, initiated by EPA, and responding to the input from peer review and the public.

In addition, the MOA established an interim guidance value of 113 ppb for PCBs in the tissues of bioassayed worms, to be considered when determining whether proposed dredged material from the New York/New Jersey

Harbor is acceptable for placement at the HARS. At the time of the MOA, the agencies agreed that, while the peer review was not complete, the science review warranted the implementation of the 113 ppb value on an interim basis. The September 2000 MOA addressed PCBs and not the other contaminants because PCBs were specifically mentioned in the HARS designation. In addition, experience in evaluating NY/NJ Harbor dredged material indicated that the PCB levels were often significant to the determination. This interim use of the 113 ppb value was intended to keep remediation of the HARS current with the latest scientific information concerning PCBs. The MOA states, "This change [PCBs] reflects current scientific developments and ensures that the agencies' approach remains consistent with the remedial objectives of the HARS designation. Notably, this change will result in improvements in the quality of HARS Remediation Material with respect to numerous parameters other than PCBs, because elevated PCB levels frequently are associated with elevated levels of other chemicals of concern." The 113 ppb HARS-specific PCB value will improve the quality of HARS Remediation Material to reflect current scientific standards, and to provide for the continued management of the HARS to reduce impacts within the PRA to acceptable levels in accordance with 40 CFR 228.11(c), as required in 40 CFR 228.15(6)(A). The 113 ppb figure was understood to be an interim value, since the scientific processes and benchmark measures used to determine whether or not dredged material meets the remediation goals of the HARS were still under review. The review of the guidelines for the HARS has taken longer than anticipated in the MOA and is still underway.

Upon signing the MOA, EPA withdrew its concurrence (given prior to the MOA) for the U.S. Gypsum Corporation to place dredged material at the HARS as Remediation Material. U.S. Gypsum brought suit against the USACE and EPA, and in a July 10, 2002 decision, Judge Jed Rakoff of the U.S. District Court, Southern District of New York, held that the announcement of the 113 ppb interim value in the MOA was *de facto* rulemaking that should have been the subject of public notice and comment. This rulemaking is intended to address the court's concerns while allowing for the use of 113 ppb value as a binding criteria applicable to dredged materials to be placed at the HARS. The need for establishing a HARS-specific tissue PCB criterion: (1) Reflects EPA

Region 2's interpretation and ongoing review of the science associated with responding to the 1998 peer review comments (USEPA, 2000a); (2) is in response to the high degree of public controversy over the question of suitability of HARS Remediation Material; (3) is appropriate as an interim protective step in light of the remediation goals of the HARS, in particular the specific mention of PCBs in the need for remediating the HARS; (4) represents an interim measure to incorporate recent science (as opposed to 1981 science) as EPA and the USACE develop a new HARS-specific evaluation process by evaluating and responding to the 2002 peer review comments on the human health proposal, conducting the scientific peer review on the ecological proposal, and responding to comments on the ecological proposal; and (5) addresses the court's procedural concerns.

This proposed HARS-specific worm tissue PCB value would remain in effect until EPA and the USACE develop a new HARS-specific evaluation process by evaluating and responding to the 2002 peer review comments on the human health proposal, conducting the scientific peer review on the ecological proposal, and responding to comments on the ecological proposal. In total, this effort may take up to 2 years to fully address and implement for all contaminants of concern.

IV. Proposed Action

In an effort to continuously incorporate and utilize the best available science to reduce adverse impacts that have occurred within the HARS (*see*, 40 CFR 228.11), EPA is proposing today to modify the designation of the HARS (40 CFR 228.15(d)(6)) to establish a HARS-specific worm tissue PCB criterion of 113 ppb for dredged material proposed for use as Remediation Material. As discussed in detail in Section III, implementation of the HARS-specific tissue PCB criterion of 113 ppb for dredged material proposed for use as Remediation Material will provide for continued remediation in accordance with 40 CFR 228.10 and 228.11(c).

V. Derivation of HARS-Specific 113 ppb PCB Criterion

This revision of the worm PCB Matrix value reflects EPA Region 2's interpretation and ongoing review of the science associated with responding to the 1998 peer review comments. This risk-based value was calculated using exposure assumptions chosen to represent specific conditions associated with consuming fish from the HARS. As

such, we believe it is the best delineation of a level for PCBs at which remediation of the HARS can be assured, based on our current assessment of available knowledge about PCBs, bioaccumulation, and the area of the HARS. The 113 ppb value for PCBs in worm tissue is based on an assessment of human noncancer health hazard risk. It is the lowest of three (cancer, noncancer, and ecological values) PCB risk- or effects-based values derived by EPA Region 2, in consultation with USACE, based in part on the recommendation of 1998 scientific peer reviewers. The general risk assessment basis for this HARS-Specific value is described below; for further details pertaining to the specific derivation of the tissue level used as the HARS-specific value, see USEPA 2000b.

1. Human Health Risk

Uptake of HARS contaminants by marine organisms was assumed to occur

through direct exposure to the sediments and/or through uptake from eating contaminated prey. For assessing ecological and human health risks, a simplified description of the food web was used to describe feeding relationships between species at the HARS. The New York Bight food web used in modeling transfer of contaminants was described by a simplified food chain consisting of three representative levels. These trophic levels were: bottom dwelling organisms, predators, and upper level predators.

For the purpose of evaluating risks to humans, it was assumed that fish consumption is the pathway of concern for humans to be exposed to contaminants in dredged material proposed for use as Remediation Material at the HARS, and that the fish consumed would be exposed through trophic transfer of contaminants from invertebrate prey. Because the HARS is

located offshore and in open water, and because data shows that suspended and dissolved constituents of dredged material do not persist in the water column following release from the barge, pathways of human exposure other than consumption of seafood (*e.g.*, inhalation, or direct exposure through bathing) were not emphasized in the evaluation process.

To determine whether a tested sediment would result in bioaccumulation that would cause significant undesirable effects with regard to human health, standard human health risk calculations were used to develop tissue values associated with specified levels of protection (cancer risk of 1×10^{-4} , hazard index of 1). The basic risk assessment equations underlying the calculations used to develop the HARS tissues values are as follows:

$$\text{Cancer risk level} = \frac{\text{MV} \times \text{CPF} \times \text{FIR} \times \text{CF} \times \text{EF} \times \text{ED} \times \text{TTF}}{\text{BW} \times \text{AT} \times \text{BFR}}$$

$$\text{Noncancer hazard quotient} = \frac{\text{MV} \times \text{FIR} \times \text{CF} \times \text{EF} \times \text{ED} \times \text{TTF}}{\text{RfD} \times \text{AT} \times \text{BFR} \times \text{BW}}$$

Where:

MV—Measured tissue value (mg/kg)

CPF—Cancer potency factor (Kg-day/mg)

FIR—Fish Ingestion Rate (g/day)

CF—Conversion factor (kg/g)

EF—Exposure frequency (365 days/year)

ED—Exposure duration (70 years)

TTF—Trophic transfer factor (unitless)

BW—Body weight (70 Kg)

AT—Averaging time (25,550 days)

BFR—Whole body to fillet ratio (unitless)

RfD—Reference dose (mg/Kg-day).

Evaluating human risks associated with contaminants in dredged material proposed for use at the HARS assumes that recreational anglers represent a reasonably maximally exposed (RME) population for assessing risks to humans. More explicitly stated, EPA Region 2 assumed that there is a subpopulation of anglers that fishes exclusively at the HARS and that all recreationally-caught fish reportedly consumed by this subpopulation of anglers are obtained by angling at the HARS. The assessment assumed that fish are filleted prior to being eaten. In addition, the assessment assumed that the consumed of fish did not use the HARS 100 percent of the time.

The following specific guideline measures and assumptions were applied to all human health risk/effects evaluations to estimate human exposure to HARS contaminants.

Cancer Potency Factor (CPF)/Reference Dose (RD)—Available cancer potency factors (2 per mg/kg-day) and chronic reference doses for oral exposure of PCBs (0.02 $\mu\text{g}/\text{kg}\text{-day}$) were obtained from the EPA Integrated Risk Information System (IRIS).

Seafood consumption (FIR)—A factor of 7.2 grams per day (g/day) was used as a site-specific estimate of daily fish consumption by high consumers (*i.e.*, New Jersey recreational anglers) in the vicinity of the HARS (USEPA, 2000b).

Exposure Duration (ED): EPA Region 2 assumed a default lifetime exposure of 70 years for its assessment of human health risks (USEPA, 2000b).

Site Use Factor—A factor to express the proportion of time that fish predators may be exposed to contaminated benthic prey residing at the HARS. A factor of 0.777 (*i.e.*, 77.7 percent HARS-area foraging), was derived to estimate site use for a “generic” fish in the diet of the

target sub-population (*i.e.*, New Jersey recreational fishers) (USEPA, 2000b).

Whole-body to fillet factor (BFR)—In assessing risks due to PCBs, EPA Region 2/CENAN employ a whole-body to fillet correction factor of 1.35 to estimate the concentration of contaminant in the whole body of the fish that is associated with the concentration in the edible (fillet) portion of the fish (USEPA, 2000b).

Trophic Transfer Factor (TTF)—Trophic transfer of contaminants from benthic prey to fish predators was estimated by applying a discrete factor that expresses the ratio of the residue concentration in predator as a function of the residue concentration in prey. A trophic transfer factor of 3 was applied based on the predictions of a widely applied food web model (Gobas, 1993).

The regulations at 40 CFR 227.6 require that there be reasonable assurance that no significant undesirable effects will occur. The regulations further provide that such reasonable assurance be based on consideration of statistical significance of effects at the 95 percent confidence

level. In our current and proposed processes, standard statistical tests are in fact used throughout the process of evaluating dredged material for suitability for placement at the HARS. Statistics are used to ensure confidence in the determination whether bioaccumulation measured in test organisms exceeds that in reference organisms. Given the methodology and assumptions used to calculate the value of 113 ppb, we believe that use of the number directly, compared to the arithmetic mean of bioassayed tissues using the material proposed to be placed at the HARS, provides the reasonable assurance required by the regulations. The additional use of statistical confidence limits, in this situation, does not increase confidence in the determination.

Accordingly, for the purposes of this rule, to promote clarity and to address concerns that have been frequently and vigorously expressed by elected officials and members of the public, the 113 ppb PCB value would be applied directly to the arithmetic mean of the worm bioaccumulation tissue test results, as a pass/fail standard. In light of the unique nature of the HARS as a site with the purpose of remediating the area designated, this approach provides further assurance that no significant undesirable effects will occur, in accordance with 40 CFR 227.6 and will reduce impacts to acceptable levels in accordance with 40 CFR 228.11(c). As such, projects having arithmetic means of PCB worm concentrations above 113 ppb and whose bioaccumulation has been shown with 95% confidence to be statistically significant (as compared to accumulations in reference exposures) would be considered to be unsuitable for placement at the HARS as they would exceed the HARS-specific PCB tissue criterion necessary to achieve the remedial goal of the HARS.

As part of our overall review of the matrix values, including the ongoing peer review process, we are considering, among other things, whether and how statistical confidence limits should continue to be applied in evaluating bioaccumulation test results. This decision should not be understood as an indication that EPA will not continue to rely on statistical confidence limits in the future, for PCBs as well as for other contaminants of concern, after our ongoing scientific peer review of the HARS TEF is completed.

VI. Supporting Documents

1. USEPA. 1997a. Supplement to the Environmental Impact Statement on the New York Dredged Material Disposal Site Designation for the Designation of

the Historic Area Remediation Site (HARS) in the New York Bight Apex. May 1997.

2. USEPA. 1997b. Response to Comments on the May 13, 1997, Proposed Rule for the Simultaneous De-Designation and Termination of the Mud Dump Site (MDS) and Designation of the Historic Area Remediation Site (HARS). August 1997.

3. USEPA. 2000. Memorandum of Agreement: among the Department of the Army, the Environmental Protection Agency, and the U.S. Army Corps of Engineers. To Strengthen Environmental Protection of the Ocean Environment and to Promote Economic Progress in the Port of New York and New Jersey. September 27, 2000.

4. USEPA. 2000a. Proposed Changes to the Bioaccumulation Testing Evaluation Framework and Response to Scientific Peer Reviewers Comments on the Framework for Determining the Suitability of Dredged Material to be Placed at the Historic Area Remediation (HARS). October 19, 2000.

5. USEPA. 2000b. Memorandum to the File from Douglas Pabst. Subject: Modification of the Matrix Value for PCB in Worm Tissue. September 27, 2000.

How Can You Get Additional Information or Copies of Support Documents?

1. Electronically. You may obtain electronic copies of this document and various support documents from the EPA home page at the **Federal Register** <http://www.epa.gov/fedrgstr/>, or on EPA Region 2's homepage at: <http://www.epa.gov/region02/water/dredge/113rule>.

2. In person. The complete administrative record for this action has been established and includes supporting documentation as well as printed, paper versions of electronic comments. Copies of information in the record are available upon request. The official record of this rulemaking is available for inspection at the EPA Region 2 Library, 16th Floor, 290 Broadway, New York, NY 10007-1866. For access to the docket materials, call Rebecca Garvin at (212) 637-3185 between 9 am and 3:30 pm Monday through Friday, excluding legal holidays, for an appointment. The record is also available for viewing at EPA's Region 2 Field Office Library, 2890 Woodbridge Avenue, Building 209, MS-245, Edison, New Jersey 08837. For access to the docket materials at this facility, call Ms. Margaret Esser (732) 321-6762 between 9 am and 3:30 pm Monday through Friday, excluding legal holidays, for an

appointment. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order." It has been determined that this rule is not a "significant regulatory action" under the terms of the Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

After considering the economic impact of today's proposed rule on small entities, the Agency certifies that this action will not have a significant economic impact on a substantial number of small entities for reasons explained below.

For the purposes of assessing the impacts of today's rule on small entities,

small entity is defined as: (1) A small business based on the Small Business Administration's (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The SBA thresholds define minimum employment, sales revenue, or other factors than may qualify an industry segment as small. The thresholds used in this analysis are firm level four digit Standard Industrial Classification (SIC) codes. Exhibit 1 presents the SBA size standards used in this analysis.

EPA used current information concerning the potential universe of small entities that could be affected by the rule by obtaining information about all permits issued and any current permit applications. Since the HARS was first designated in 1997, the U.S. Army Corps of Engineers has received 17 permit applications for HARS placement, of which 14 permits were issued (Federal authorizations were not included in this analysis as the USACE is not a small entity), and there are currently 3 permit applications pending. As the HARS is anticipated to exist for a limited time, until the PRA has been remediated with at least one meter of Remediation Material, EPA believes it is reasonable to estimate that this universe of current and pending applications constitute the reasonable universe of entities affected by the proposed rule. Of the 17 permit applications, 4 (Castle Astoria Terminals, Inc., Port Imperial Marina, New York WaterWays, and International Matex Tank Terminals) are small entities, which is not a substantial number of small entities. Of the 4, 3 (Castle Astoria Terminals, Inc., Port Imperial Marina, and New York WaterWays) would have been affected by today's proposal, based upon past permitting information. Castle Astoria Terminals, Inc. has had a permit for HARS placement since 1999, but has not dredged to date. Port Imperial Marina, recently received a permit for HARS placement, but dredges very infrequently. New York WaterWays does not currently have a HARS placement permit, and has not dredged for many years. Further, these small entities are only a very small percentage of their SIC code.

In summary, based on past permit information, there would have been a small absolute number of small entities affected by the proposed rule, with very low impacts. As such, EPA concludes that the proposed rule will not have a

significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

This proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) because it would not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

D. The Unfunded Mandates Reform Act and Executive Order 12875

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

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA estimated total

annualized (post-tax) costs of compliance for the proposed rule to be \$13.5 million. Of this total \$13.5 million would be incurred by the private sector and \$0 would be incurred by State and Local governments. Thus, this proposed rule is not subject to the requirements of Sections 202 and 205 of UMRA.

EPA also has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule would apply equally to all dredged material to be placed at the HARS, thus there would be no unique effect of the rule on small governments. This rule is not anticipated to result in significant expenditures for small governments based on the universe of permit holders and applicants for the HARS. Thus, the requirements of Section 203 of UMRA also do not apply to this rule.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." "Policies that have Tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal

government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.”

This proposed rule does not have Tribal implications. It would not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. EPA does not have information indicating that any Tribe would incur costs because of this rule. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe might have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not an economically significant rule as defined under Executive Order 12866 and does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. Therefore, it is not subject to Executive Order 13045.

H. Executive Order 13211: Energy Effects

This proposed rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (“NTTAA”), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus

standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

No action from this proposed rule will have a disproportionately high and adverse human health and environmental effect on any segment of the population. In addition, this rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 12898 do not apply.

K. National Environmental Policy Act of 1969

Section 102(c) of the National Environmental Policy Act of 1969, Section 4321 et seq. (NEPA) requires Federal agencies to prepare environmental impact statements (EIS) for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. Although EPA ocean dumping program activities have been determined to be “functionally equivalent” to NEPA, EPA has voluntarily undertaken to follow NEPA procedures when designating ocean

dumping sites. See, 63 FR 58045 (Oct. 29, 1998).

In August 1982, EPA published a final EIS designation of the New York Dredged Material Disposal Site (Mud Dump Site).” The EIS assessed the environmental impacts of establishing an ocean disposal site for 100 million cubic yards (mcy) of dredged materials generated within the Port of New York and New Jersey. After completion of the EIS, EPA designated the Mud Dump Site as an Impact Category I disposal site (see, 40 CFR 228.10(c)) with a capacity of 100 mcy (see, 40 CFR 228.15(d)(6)). Approximately 68 mcy of dredged material was disposed of at the Mud Dump Site. In 1997, EPA prepared a Supplemental EIS, for the Designation of the Historic Area Remediation Site (HARS) in the New York Bight Apex. That document addressed the environmental considerations relevant to the HARS, and identified the Priority Remediation Area (PRA) within the HARS. At the time of the rule designating the HARS, the PCB matrix value for disposal at the site was 400 ppb. The establishment of the new PCB matrix value of 113 ppb is a refinement based on new information since the designation of the HARS, which will have positive impacts on the marine environment. EPA does not consider this refinement as a substantial change in the designation of the HARS. Consequently, no additional NEPA review is required.

L. The Endangered Species Act

Under Section 7(a)(2) of the Endangered Species Act, 16 U.S.C. 1536(a)(2), federal agencies are required to “insure that any action authorized, funded, or carried on by such agency * * * is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species * * *.” Under regulations implementing the Endangered Species Act, a federal agency is required to consult with either the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (depending on the species involved) if the agency’s action “may effect” endangered or threatened species or their critical habitat. See, 50 CFR 402.14(a).

EPA initiated its consultation process with the U.S. Fish and Wildlife Service (USFWS) on April 6, 1995 for what was then the Mud Dump Site and surrounding areas. The consultation process was concluded with them on July 28, 1995, with the USFWS’s concurrence that EPA’s action was not likely to adversely affect federally listed

species under its jurisdiction. The action covered by this proposed rule is more protective of the marine environment. Accordingly, the conclusions of our earlier consultation with the USFWS for the designation of the HARS is still valid.

EPA initiated threatened and endangered species consultation with the National Marine Fisheries Service (NMFS) on April 4, 1996. As directed by the NMFS, EPA prepared a Biological Assessment (BA) to assess the impacts of the designation of the HARS on the Kemp's ridley and loggerhead sea turtles, and the humpback and fin whales. In May 1997, EPA sent the NMFS a copy of the BA, which concluded that the designation of the HARS is not likely to adversely affect the species in question; NMFS concurred with this conclusion. Since the BA utilized a PCB worm tissue matrix value of 400 ppb and this action proposes 113 ppb, any impacts to endangered or threatened species, or their critical habitats resulting from this action will be positive; the conclusion of the earlier consultation with NMFS is still valid.

M. Magnuson-Stevens Fishery Conservation and Management Act

The 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) require the designation of essential fish habitat (EFH) for federally managed species of fish and shellfish. Pursuant to section 305(b)(2) of the MSFCMA, federal agencies are required to consult with the National Marine Fisheries Service (NMFS) regarding any action they authorize, fund, or undertake that may adversely affect EFH. An adverse effect has been defined by the Act as follows: "Any impact which reduces the quality and/or quantity of EFH. Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions." EFH became effective after the HARS was designated. However, prior to September 2000 all USACE permits and authorizations were subject to EFH review utilizing a PCB matrix value of 400 ppb and were found acceptable. Since September 2000, all USACE permits and authorizations have been subject to EFH review utilizing a PCB matrix value of 113 ppb and have been found acceptable. Since this action proposes 113 ppb, any impacts to EFH species, or their critical habitats predicted from this action would be

expected to be the same, as such, the consultation requirements of Section 305(b)(2) of the MSFCMA do not apply to this rule.

N. Plain Language Directive

Executive Order 12866 requires each agency to write all rules in plain language. EPA has written this proposed rule in plain language to make this proposed rule easier to understand.

O. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to "expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment." EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means "those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law."

Today's proposed rule implements Section 103 of the MPRSA which requires that permits for dredged material are subject to EPA review and concurrence. The proposed rule would amend 40 CFR 228.15(d)(6) by establishing a HARS-specific tissue PCB criterion of 113 ppb for dredged material proposed for use as Remediation Material.

As the HARS-specific PCB criterion of 113 ppb represents the lower of the non-cancer, cancer, and ecological PCB values, EPA expects that this proposed rule would afford additional protection of aquatic organisms at individual, population, community, or ecosystem levels of ecological structures, especially since the previous matrix value was 400 ppb. Therefore, EPA expects today's proposed rule would advance the objective of the Executive Order to protect marine areas.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: October 1, 2002.

Jane M. Kenny,

Regional Administrator, EPA Region 2.

In consideration of the foregoing, EPA is proposing to amend part 228 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by adding paragraph (d)(6)(v) (E) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(d) * * *

(6) * * *

(v) * * *

(E) HARS-specific Polychlorinated Biphenyl (PCB) Tissue Criterion:

PCB bioaccumulation worm test results for dredged material approved for use at the HARS as Remediation Material shall not exceed the HARS-specific PCB tissue criterion of 113 ppb. This HARS-specific PCB tissue criterion will be applied to the arithmetic mean concentration reported for the analyses of the worm tissue replicates exposed to the tested sediments, without the use of statistical confidence limits.

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[FR Doc. 02-25586 Filed 10-7-02; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02-278, CC Docket No. 92-90, FCC 02-250]

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on whether to revise, clarify or adopt any additional rules in order to more effectively carry out Congress's directives in the Telephone Consumer Protection Act of 1991 (TCPA). New technologies have emerged that allow telemarketers to better target potential customers and make it more cost effective to market using telephones and facsimile machines. These new telemarketing techniques have also increased public concern about the effect on consumer privacy. Therefore, we seek comment on whether to revise or clarify our rules governing unwanted telephone solicitations and the use of automatic

dialing systems, prerecorded or artificial voice messages, and telephone facsimile machines.

DATES: Comments are due November 22, 2002 and reply comments are due December 9, 2002. Written comments by the public on the proposed information collections are due November 22, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection on or before December 9, 2002.

ADDRESSES: Parties who choose to file comment by paper must file an original and four copies to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at www.fcc.gov/e-file/ecfs.html. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to lesmith@fcc.gov and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC, 20503 or via the Internet to Kim_A_Johnson@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon or Richard D. Smith at 202-418-2512, Consumer & Governmental Affairs Bureau. For additional information concerning the information collection(s) contained in this document, contact Les Smith at 202-418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-278 and CC Docket No. 92-90, FCC 02-250, released September 18, 2002. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

Paperwork Reduction Act

This NPRM contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to

comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Only those proposals that might change an information collection requirement are discussed below.

OMB Control Number: 3060-0519.

Title: Rules and Regulations

Implementing the Telephone Consumer Protection Act (TCPA) of 1991, NPRM, CG Docket No. 02-278 and CC Docket No. 92-90.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 30,000.

Estimated Time Per Response: 55.1 hours (average).

Frequency of Response:

Recordkeeping; On occasion reporting requirement; Third Party disclosure.

Total Annual Burden: 1,653,600 hours.

Total Annual Costs: None.

Needs and Uses: The current total public disclosure and recordkeeping burden for collections of information under the TCPA rules is 936,000 hours, as stated most recently in the Commission's OMB submission to extend approval of the information collection in connection with the TCPA rules.

1. Additional Hour Burden for Company-Specific Do-Not-Call List Requirements

In this NPRM, the Commission seeks comment on the current recordkeeping requirement on companies to maintain lists of telephone subscribers who do not wish to be contacted by telephone. Taking into account more recent estimates on the number of telemarketing calls made daily in the United States, we estimate that the

requirement to maintain such lists may result in an additional 291,200 burden hours.

2. Proposal That the Commission Require Common Carriers To Inform Subscribers of the Option To Register With a National Do-Not-Call List and To Inform Any Telemarketers To Which They Provide Services of the Do-Not-Call Requirements

We estimate that any requirement on common carriers to notify telemarketers and consumers of a national do-not-call list will account for an additional burden of 396,400 hours.

3. Proposal That the Commission Adopt Certain Recordkeeping Requirements

The Commission also seeks comment on whether to adopt certain recordkeeping requirements that must be met before companies may avail themselves of any "safe harbor" protections for violating the do-not-call rules. Companies that conduct telemarketing already maintain their own do-not-call lists and many of them must reconcile their lists with state do-not-call lists. We believe that any additional recordkeeping burden as a result of specific "safe harbor" requirements, particularly the verifiable authorizations, would be minimal. We estimate that this requirement will account for one hour of recordkeeping burden per company, or an additional 30,000 hours.

Synopsis of NPRM

1. It has been nearly ten years since the Commission adopted a broad set of rules to curb unwanted telephone solicitations in the *TCPA Order* (57 FR 48333, October 23, 1992). In this NPRM, we seek to review the practices used to market goods and services over the telephone and facsimile machine that are the focus of the TCPA and the Commission's implementing regulations. In doing so, we ask whether the Commission should: (1) refine its existing rules on the use of autodialers, prerecorded messages, and unsolicited facsimile advertisements, to account for technological developments in recent years and emerging telemarketing practices; (2) adopt any additional rules as permitted by the statute to ensure that our telemarketing requirements protect the privacy of individuals and permit legitimate telemarketing practices; and (3) reconsider the option of establishing a national do-not-call list as authorized by Congress in the TCPA. On the subject of a national do-not-call list, we are particularly interested in comments addressing those entities not covered by the FTC's proposed national

do-not-call database as well as the interplay between a national registry and state do-not-call lists. We request that commenters address issues relating to our current rules separately from those issues relating to a national do-not-call list.

2. In evaluating the issues in this NPRM, we will be mindful of the constitutional standards applicable to governmental regulations of commercial speech articulated in *Central Hudson Gas & Elec. Corp. v. Public Service Commission*. In order to determine whether restrictions on commercial speech survive "intermediate scrutiny," *Central Hudson* sets out a four-part test. *Central Hudson* asks first whether the speech in question concerns illegal activity or is misleading, in which case the government may freely regulate the speech. If the speech is not misleading and does not involve illegal activity, the court applies the rest of the four-part test to the government's regulation. The second prong of *Central Hudson* examines whether the government has a substantial interest in regulating the speech. Third, the government must show that the restriction on commercial speech directly and materially advances that interest. Finally, the regulation must be narrowly tailored. Narrowly tailored means that the government's restriction on speech reflects a "careful[ly] calculat[ion of] the costs and benefits associated with the burden on speech imposed by its prohibition." To the extent that any proposed changes to our current rules implicate these constitutional standards, we seek comment on such implications.

1. TCPA Rules

a. Company-Specific Do-Not-Call Lists

3. The TCPA directs the Commission to "compare and evaluate alternative methods and procedures . . . for their effectiveness in protecting [residential telephone subscribers'] privacy rights" to avoid receiving unwanted telephone solicitations. In the *TCPA Order*, the Commission determined that rules requiring telemarketers to maintain their own lists of consumers who did not wish to be called sufficiently balanced consumer interests in limiting unsolicited advertising with telemarketers' interests in providing beneficial services to consumers. The company-specific do-not-call approach protects residential telephone subscriber privacy by requiring telemarketers to place a consumer on a do-not-call list if the consumer asks not to receive further solicitations.

4. We now seek comment on the overall effectiveness of the company-

specific do-not-call approach in providing consumers with a reasonable means to curb unwanted telephone solicitations. We recognize that some consumers may feel that receiving product and service information by telephone helps them reap the benefits of a competitive marketplace; such consumers may value the savings and convenience that telemarketing often provides. Other consumers may wish to limit, or even stop altogether, the number of telemarketing calls they receive. Given the volume of telemarketing calls, we seek comment on whether the company-specific do-not-call approach adequately balances the interests of those consumers who wish to continue receiving telemarketing calls, and of the telemarketers who wish to reach them, against the interests of those who object to such sales calls. We note that, under the company-specific do-not-call approach, consumers must repeat their request not to be called on a case-by-case basis as calls are received. We seek comment on whether this approach is unreasonably burdensome for consumers. We also seek comment on how effective such requests have been in practice in preventing unwanted telephone solicitations. For example, we seek comment on whether such requests are typically honored, whether consumers continue to receive calls for some period of time after requesting that they be placed on a do-not-call list, and whether some telemarketers hang up before consumers can assert their "do-not-call" rights. In addition, we seek comment on whether consumers with hearing and speech disabilities often may be unable to convey a request not to be called to telemarketers.

5. As discussed above, changes in the marketplace and technological innovations since the Commission adopted its TCPA rules in 1992 may have reduced the effectiveness of the company-specific approach. For example, the widespread use of predictive dialers and answering machine detection technology results in many "hang-up" or "dead air" calls in which the consumer has no opportunity to request that the telemarketer not call in the future. The FTC indicates that use of predictive dialers has increased dramatically in the past decade. The FTC notes that many consumers feel frightened, threatened, or harassed when receiving a pattern of such hang-up calls. In addition, there is no way for the consumer to determine whether such calls are placed by telemarketers or may be part of some illegitimate conduct. Such calls may also be

particularly trying for the elderly and persons with disabilities who may have difficulty reaching the phone only to be disconnected. Such calls may also be disruptive to the increasing number of individuals who now work from home by tying up telephone lines or disconnecting telecommuters from the Internet. We seek comment on what, if any, legitimate business or commercial speech interest is promoted by these calls. We seek comment on these issues and any other impact that changes in the telemarketing industry over the last decade have had on the overall effectiveness of the company-specific approach.

6. In the *TCPA Order*, the Commission enumerated a number of advantages both to consumers and businesses in adopting a company-specific do-not-call approach. In particular, the Commission concluded that company-specific do-not-call lists: (1) Were already maintained by many telemarketers; (2) allow residential subscribers to selectively halt calls from telemarketers; (3) allow businesses to gain useful information about consumer preferences; (4) protect consumer confidentiality because the lists would not be universally accessible; and (5) impose the costs of protecting consumers on telemarketers rather than telephone companies or consumers. We seek comment on whether these and any other potential advantages of the company-specific do-not-call approach remain valid today. In addition, we seek comment on whether the company-specific approach should be retained if the FTC, either acting alone or in conjunction with the Commission, adopts a national do-not-call list. Under such circumstances, we seek comment as to whether the benefits of retaining company-specific do-not-call lists to consumers would continue to outweigh the costs to telemarketers. Parties are strongly encouraged to provide empirical studies or other specific evidence whenever possible to support their arguments.

7. If the Commission concludes that it should retain the company-specific do-not-call lists, we seek comment on whether the Commission should consider any additional modifications that would allow consumers greater flexibility to register on such lists. For example, we seek specific comment on whether companies should be required to provide a toll-free number and/or a website that consumers can access to register their name on the do-not-call list. In addition, we seek comment on whether any additional measures should be taken to ensure that consumers with disabilities have the

same opportunity as other consumers to request that they be placed on do-not-call lists. We also seek comment on whether companies should be required to respond affirmatively to such requests or otherwise provide some means of confirmation so that consumers may verify that their requests have been processed. As a related matter, we seek comment as to whether the Commission should set a specific time frame for companies to process do-not-call requests. We also ask whether the requirement that companies honor do-not-call requests for ten years is a reasonable length of time for consumers and telemarketers. In addition, we seek comment on any possible Commission or industry initiatives that would better inform consumers of their right to request placement on a company's do-not-call list. We also seek comment on the effectiveness of any private sector initiatives, such as the Direct Marketing Association's Telephone Preference Service, in reducing unwanted sales calls. Are there any industry "best practices" that might provide telemarketers with possible safe harbors from liability for violating our do-not-call rules? Finally, we seek comment on whether our rules should be modified to minimize unnecessary burdens on telemarketers. We seek comment on these and any other modifications that commenters may suggest that would better balance the goal of limiting unsolicited advertising against telemarketers' burdens in conducting beneficial or otherwise legitimate telemarketing practices.

8. *Interplay of sections 222 and 227.* The Commission has recently released an Order implementing section 222 of the Communications Act of 1934, as amended. Section 222, entitled "Privacy of Customer Information," obligates telecommunications carriers to protect the confidentiality of certain information. In the *CPNI Order* (67 FR 59205, September 20, 2002), the Commission determined that a telecommunications carrier may use a customer's CPNI to market various services to a customer if that customer has provided its carrier with appropriate consent. The section 227 rules require telemarketers to maintain their lists of consumers who do not wish to be called and to place a consumer on a do-not-call list if the consumer asks not to receive further solicitations.

9. We seek comment broadly on the interplay between sections 222 and 227. For example, if an individual places her name on her carrier's do-not-call list under section 227 (or a national do-not-call list, if one were implemented), should such an express request not to be

contacted by means of the telephone be honored even though the customer may also have provided implied (opt-out) consent under section 222 for use and disclosure of her CPNI? We believe that a consumer's request to be placed on a telecommunications carrier's do-not-call list limits that carrier's ability to market to that consumer over the telephone. The carrier, however, may still market to that consumer, using her CPNI, in other ways (e.g., direct mail, email, etc.). Honoring a do not call request under section 227 does not render a consent under section 222 a nullity, but instead merely limits the manner of contact (i.e., marketing over the telephone) consistent with the express request of the customer under section 227. Further, we believe it likely that permitting a section 222 opt-out consent to eliminate or trump a section 227 do not call request would lead to customer confusion concerning privacy rights and the actions required to secure those rights. We request comment on our tentative conclusion, as well as on the rationale underlying that conclusion. We also request comment on whether we should reach that same tentative conclusion where the form of consent provided under section 222 is an express opt-in consent. Commenters should also analyze those constitutional considerations that may influence our determination, and explain with particularity how their recommendations are consistent with first amendment requirements.

10. As discussed below, the Commission's rules permit an exemption for companies to deliver artificial or prerecorded message calls to consumers with whom they have an "established business relationship." The Commission seeks comment on what effect the established business relationship exemption might have on the telecommunications industry, if a national do-not-call list is established. Should we consider modifying the definition of "established business relationship" so that a company that has a relationship with a customer based on one type of product or service may not call consumers on the do-not-call list to advertise a different service or product?

b. Network Technologies

11. We seek comment on whether network technologies have been developed over the last decade that may allow consumers to avoid receiving unwanted telephone solicitations. If so, we seek comment on whether and how these technologies should influence our analysis of the merits of revising our company-specific do-not-call rules or possibly adopting a national do-not-call

list. In particular, we seek comment on what factors the Commission should consider in deciding whether to rely on these technologies. In the 1992 *TCPA Order*, the Commission rejected the network technology method of avoiding unwanted telephone solicitations. In particular, the Commission considered whether to require telemarketers to use a special area code or telephone number prefix that would allow consumers to block such calls using automatic number identification (ANI) or a caller ID service. Based on the costs and technical barriers to implement this alternative, however, the Commission concluded that this solution was not the best means for accomplishing the objectives of the TCPA at that time. The Commission also noted that it was unclear whether fees on telemarketers would be sufficient to cover the costs of making call blocking technology universally available, raising the possibility that such costs would be passed on to residential telephone subscribers, in violation of the TCPA. We seek comment on whether these concerns remain persuasive today. We seek comment on whether we should consider any other technologies in this context, and, if so, we ask commenters to include a brief explanation of how these technologies operate and how much they would cost to implement.

12. Under the Commission's rules, with certain limited exceptions, common carriers using Signaling System 7 (SS7) and offering or subscribing to any service based on SS7 functionality are required to transmit the calling party number (CPN) associated with an interstate call to interconnecting carriers. As discussed in greater detail below, we take this opportunity to seek comment on whether the Commission should consider any additional "caller ID" requirements in the context of its review of the TCPA rules. Specifically, should the Commission require telemarketers to transmit the name and telephone number of the calling party, when possible, or prohibit them from blocking or altering the transmission of such information? We also seek comment on what impact any changes to our "caller ID" rules might have on existing state "caller ID" rules.

c. Autodialers

13. *Definition.* Section 227 and the Commission's implementing regulations define automatic telephone dialing systems as "equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers." The Commission seeks

comment on the definition of "automatic telephone dialing system" (or "autodialer") and whether it is necessary to identify the technologies section 227 is designed to address. The TCPA and Commission's rules prohibit calls using an autodialer to emergency telephone lines, to the telephone line of a guest room of a health care facility, to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call. In addition, Commission rules provide that all artificial or prerecorded messages delivered by an autodialer shall, at the beginning of the message, state the identity of the entity initiating the call and, during the message, the telephone number or address of such entity. The Commission has received inquiries about whether certain technologies fall within these restrictions, given that they may or may not be classified as "automatic telephone dialing systems."

14. The legislative history of the TCPA suggests that autodialer-generated calls are more intrusive to the privacy concerns of the called party than live solicitations. An autodialer can generate far more calls to residences than a telemarketer can manually. In addition, an autodialer is frequently used to send artificial or prerecorded messages, which the legislative history suggests are often a greater nuisance and invasion of privacy than calls placed by "live" persons. We seek comment on this reading of the legislative history and whether Congress intended the definition of "automatic telephone dialing system" to be broad enough to include any equipment that dials numbers automatically, either by producing 10-digit telephone numbers arbitrarily or generating them from a database of existing telephone numbers. The Commission recognizes that in the last decade new technologies have emerged to assist telemarketers in dialing the telephone numbers of potential customers. More sophisticated dialing systems, such as predictive dialers and other electronic hardware and software containing databases of telephone numbers, are now widely used by telemarketers to increase productivity and lower costs. Therefore, we ask commenters to provide information on the various technologies used to dial telephone numbers. We invite comment on the use of random and sequential number generators and whether an autodialer can generate phone calls from a database of existing numbers. If a particular technology generates numbers at random, how does

a telemarketer comply with the law to avoid calling emergency phone lines, health care facilities, pager numbers, and wireless telephone numbers? In light of new technologies and the legislative history, is there a need to refine the definition in our rules to better balance the goal of limiting unsolicited advertising against the burdens on telemarketers and their interest in providing beneficial telemarketing services?

15. *Autodialed Calls to Residences and Businesses.* Additionally, the Commission seeks input from commenters about the costs and benefits of adopting rules to further restrict the use of autodialers to dial residential and business telephone numbers. We specifically seek comment on the practice of using automatic telephone dialing equipment to dial large blocks of telephone numbers in order to identify lines that belong to telephone facsimile machines. Should the Commission adopt rules to restrict this practice?

16. *Predictive Dialers.* We seek specific comment on whether a predictive dialer, as a form of automatic telephone dialing system, is subject to the ban on calls to emergency lines, health care facilities, paging services, and any service for which the called party is charged for the call. Specifically, we ask whether a predictive dialer that dials telephone numbers using a computer database of numbers falls under the TCPA's restrictions on the use of autodialers. We seek comment on whether the Commission should adopt rules to further restrict the use of predictive dialers to dial consumers' telephone numbers. In addition to automatically dialing numbers, predictive dialers are set up to "predict" the average time it takes for a consumer to answer the phone and when a telemarketer will be free to take the next call. When a consumer answers the telephone, a predictive dialer transfers the call to an available telemarketer. When a predictive dialer simultaneously dials more numbers than the telemarketers can handle, some of the calls are disconnected. The consumer may hear silence on the line as the call is being transferred or a "click" as the call is disconnected. In 1991, the Commission received a total of 757 complaints regarding calls placed to subscribers by autodialers. From June 2000 to December 2001, the Commission received over 1,500 inquiries about predictive dialing alone. In addition, the consumer alert titled "Predictive Dialing: Silence on the Other End of the Line" has received over 16,000 hits on the Commission's website since the alert

was posted in February of 2001. In light of the increased use of predictive dialers, the Commission seeks recommendations on what approaches we might take to minimize any harm that results from the use of predictive dialers. Cognizant of the benefits of predictive dialing to the telemarketing industry, the Commission invites comment on whether requiring a maximum setting on the number of abandoned calls or requiring telemarketers who use predictive dialers to also transmit caller ID information are feasible options for telemarketers. We also seek comment on whether prohibiting telemarketers from blocking caller ID information would alleviate the harm that results when predictive dialers abandon calls. As noted earlier, under the Commission's caller ID rules, common carriers using SS7 and offering or subscribing to any service based on SS7 functionality are required to transmit the CPN associated with an interstate call to interconnecting carriers. If the Commission were to adopt rules regarding the transmission of caller ID information by telemarketers, should we consider amending the caller ID rules in any way to ensure the two sets of rules are consistent? We also invite commenters to suggest alternative approaches to the problems associated with abandoned calls.

17. *Answering Machine Detection.* Another reason for "dead air" may be the use of Answering Machine Detection (AMD) technology that monitors calls once they are answered. According to DialAmerica Marketing, Inc., AMD can be used along with automatic dialing systems to deliver telemarketing calls. AMD may either send a prerecorded message to an answering machine or transfer the call to a telemarketer once it detects that a customer has answered the call. According to comments filed with the FTC, if the AMD detects "noise" (e.g., the word "Hello") followed by silence, it assumes that a person has answered the phone. If the AMD detects noise for several seconds, it assumes that it is an answering machine message. In either case, the AMD may be programmed to disconnect the call or send a prerecorded message to an answering machine. In the event that a person has answered the telephone and the call is transferred to a sales representative, the use of AMD involves the monitoring of the line for several seconds and may create "dead air" while the call is being transferred. The Commission seeks comment on the use of AMD by the telemarketing industry and whether AMD technology

is responsible for much of the “dead air” consumers encounter. We also seek comment on whether consumers are most frustrated with the delay in response as the call is transferred to a telemarketer, or with calls that are abandoned entirely, or with both. Would restrictions on the use of AMD serve to alleviate the problem of “dead air?” Should restrictions on AMD be implemented in conjunction with restrictions on autodialers and predictive dialers? Commenters are strongly encouraged to support their arguments with empirical studies or other specific evidence.

d. Identification Requirements

18. Commission regulations require that a person or entity making a telephone solicitation must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The term “telephone solicitation” is defined to mean the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of * * * property, goods, or services * * *. The TCPA clearly imposes identification requirements upon artificial and prerecorded voice messages and our identification rules apply without limitation to “any telephone solicitation to a residential telephone subscriber.” Nonetheless, we seek comment on whether we should modify our rules to state expressly that the identification requirements apply to otherwise lawful artificial or prerecorded messages, as well as to live solicitation calls.

19. Under Commission rules, telemarketers who use autodialers to send artificial or prerecorded messages similarly must identify themselves by name and phone number or address. We seek comment on the Commission’s identification requirement at 47 CFR 64.1200(d) and its applicability to predictive dialing and other circumstances involving abandoned telemarketing calls. We note that, in its discussion on predictive dialing, the FTC maintains that telemarketers who abandon calls are violating section 310.4(d) of the Telemarketing Sales Rule. The FTC states that, under its rules, when a telemarketer calls a consumer, the telemarketer is required to disclose identifying information to the person receiving the call. According to the FTC, the consumer is “receiving the call” when the consumer answers the telephone. Therefore, if a predictive dialer abandons the call before the

telemarketer identifies himself or herself, the FTC proposes that the telemarketer is violating the Telemarketing Sales Rule. We seek comment on whether the Commission should reach a similar conclusion.

e. Artificial or Prerecorded Voice Messages

(i) Commercial and Non-Commercial Calls

20. The TCPA and Commission rules prohibit telephone calls to residences using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is for emergency purposes or is specifically exempted. Commission rules exempt calls that are non-commercial as well as commercial calls that do not include the transmission of any unsolicited advertisement. The rules define “unsolicited advertisement” to mean “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission.” While the Commission has declined to create specific categories of non-commercial exemptions (other than for tax-exempt nonprofit organizations, discussed below), it noted that messages that do not seek to sell a product or service do not tread heavily upon the consumer interests implicated by section 227. Therefore, the Commission determined that calls conducting research, market surveys, political polling, or similar activities which do not involve solicitation as defined by the rules are exempt from the prohibition on prerecorded messages. We note here that the exemption for non-commercial calls applies to a wide range of entities, some of which are engaged in political or religious discourse. This Commission does not intend in this NPRM to seek comment on the exemption as it applies to political and religious speech.

21. We specifically seek comment on artificial or prerecorded messages containing offers for free goods or services (including free estimates or free analyses) and messages with “information-only” about products. We also invite comment about calls seeking people to help sell or market a business’ products (a kind of “help wanted” message). We note that, while these calls do not purport to sell something, they often contain messages advertising the quality of certain goods or services and are intended to generate future business. Such messages usually include phone numbers that consumers

can call to obtain further information, at which time the seller offers additional goods or services for purchase. Such calls arguably have a dual purpose, as in the case when a business calls to inquire about a customer’s satisfaction with a product or service already purchased, but is nevertheless motivated in part by the desire to ultimately sell additional goods or services. The Commission therefore seeks comment on whether our rules would better serve consumers and businesses if they more explicitly addressed those calls that include information about a product or service but do not immediately solicit a purchase. Would it balance the interests of consumers and telemarketers more effectively for us to clarify that calls containing offers for free goods or services are prohibited without the prior express consent of the called party? Would such action assist telemarketers in their efforts to comply with our rules, as well as reduce the number of unwanted telephone solicitations? Again, as stated above, we note that we are not seeking comment regarding political or religious speech.

22. Based on public inquiries, we also seek comment on prerecorded messages sent by radio stations or television broadcasters that encourage telephone subscribers to tune in at a particular time for a chance to win a prize or some similar opportunity. Does the Commission need to specifically address these kinds of telemarketing calls, and, if so, what rules might we adopt to appropriately balance consumers’ interest in restricting unsolicited advertising with commercial freedoms of speech?

(i) Tax-Exempt Nonprofit Organizations

23. The TCPA excludes calls or messages by tax-exempt nonprofit organizations from the definition of “telephone solicitation.” In the *TCPA Order*, the Commission concluded that calls by tax-exempt nonprofit organizations also should be exempt from the prohibition on prerecorded messages to residences as non-commercial calls. Noting that the TCPA seeks primarily to protect subscribers from unrestricted commercial telemarketing activities, the Commission found no evidence to show that non-commercial calls represented as serious a concern for telephone subscribers as unsolicited commercial calls. In addition, the Commission determined that calls made by independent telemarketers on behalf of tax-exempt nonprofit organizations are not subject to our rules governing telephone solicitations. We point out,

however, that the Commission has received inquiries over the years about certain practices by nonprofit organizations. We take this opportunity to seek comment on calls made jointly by nonprofit and for-profit organizations and whether they should be exempt from the restrictions on telephone solicitations and prerecorded messages. For example, if a nonprofit organization calls consumers to sell another company's magazines and receives a portion of the proceeds, should such calls fall within the exemption? We emphasize in this NPRM that the exemption for tax-exempt nonprofit organizations applies to religious and political organizations that have likewise received tax exempt status from the U.S. government. We note here that the exemption for non-commercial calls applies to a wide range of entities, some of which are engaged in political or religious discourse. In this NPRM, we do not seek comment on the exemption as it applies to political and religious speech. We emphasize that we do not seek comment in this notice on the exemption as it applies to political and religious speech whether conducted by nonprofit organizations or for-profit organizations on behalf of nonprofit organizations. We note that the statute and our rules clearly apply already to messages that are predominantly commercial in nature, and that we will not hesitate to consider enforcement action should the provider of an otherwise commercial message seek to immunize itself by simply inserting purportedly "non-commercial" content into that message.

(ii) Established Business Relationship

24. In the *TCPA Order*, the Commission determined that, based on the record and legislative history, the TCPA permits an "established business relationship" exemption from the restrictions on artificial or prerecorded message calls to residences. The Commission concluded that a solicitation to someone with whom a prior business relationship exists does not adversely affect subscriber privacy interests. The Commission defined the term "established business relationship" to mean "a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by

either party." We seek comment on whether any circumstances have developed that would justify revisiting these conclusions. If so, would revisiting the exemption interfere with ongoing business relationships or impede communications between businesses and their customers, particularly for small businesses? Should the Commission specify by rule the particular circumstances that would establish the requisite business relationship? We seek comment specifically on whether we should clarify the type of consumer inquiry that would create an established business relationship for purposes of the exemption. For example, need we clarify that a consumer's request for information related to business hours or directions to a business location is not an inquiry that would establish the requisite business relationship? The Commission also invites comment on whether merely asking at a previous time about a company's products, services, or prices could establish a prior business relationship. If so, is there any time limitation to such relationships?

25. We also seek comment on the interplay between the established business relationship exemption and a customer's request not to receive calls from a person or entity with which the customer has a prior business relationship. In the *TCPA Order*, the Commission noted that a business may not make telephone solicitations to an existing or former customer who has asked to be placed on that company's do-not-call list. The Commission explained that a customer's request to be placed on the company's do-not-call list terminates the business relationship between the company and that customer for the purpose of any future solicitation. We seek comment on the effect of a do-not-call request on a prior business relationship. Specifically, should a company be obligated to honor a do-not-call request even when the customer continues to do business with the entity making the solicitations? Or is the consumer obligated to first terminate all business with the company before the company must suspend solicitation calls to that customer? For example, must a consumer who subscribes to a daily newspaper or holds a credit card cancel the newspaper subscription or credit card in order to stop future solicitation calls from those businesses?

f. Time of Day Restrictions

26. In the *TCPA Order*, the Commission concluded that it was in the public interest to impose time of day restrictions on telephone solicitations as

reasonable limitations on telemarketing to residences. Accordingly, the Commission implemented regulations that prohibited unsolicited sales calls before 8:00 am and after 9:00 pm local time at the called party's location. As part of our review of the current TCPA rules, we seek comment on how effective these time restrictions have been at limiting objectionable solicitation calls. The FTC's Telemarketing Sales Rule also includes calling time restrictions that are consistent with the FCC's rules on calling hours. The FTC indicates that the current calling time restrictions provide reasonable protections for consumers' privacy while not burdening the telemarketing industry. The FTC also notes that altering the calling hours under the TSR would create a conflict in the federal [FCC] regulations governing telemarketers. We seek comment on this reasoning. In addition, should more restrictive calling times be adopted only in the event a national do-not-call list is not established, or could they work in conjunction with a national registry to better protect consumers from receiving telephone solicitations to which they object?

g. Unsolicited Facsimile Advertisements

27. The TCPA prohibits the transmission of unsolicited advertisements by telephone facsimile machines and requires those sending any messages via telephone facsimile machines to identify themselves to message recipients. We seek comment on the continued effectiveness of these regulations and on any developing technologies, such as computerized fax servers, that might warrant revisiting the rules on unsolicited faxes. In considering any possible rule changes, we will take into account both the record developed during this proceeding, as well as the Commission's extensive enforcement experience regarding the rules on unsolicited fax advertisements.

(i) Prior Express Invitation or Permission

28. The TCPA prohibits the sending of unsolicited advertisements to telephone facsimile machines. The Commission's rules define an unsolicited advertisement as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission." We seek comment on the need to clarify what constitutes prior express invitation or permission for purposes of sending an unsolicited fax. In the *1995 TCPA*

Reconsideration Order (60 FR 42068, August 15, 1995), the Commission determined that the intent of the TCPA was not to equate mere distribution or publication of a telephone facsimile number with prior express permission or invitation to receive such advertisements. The Commission determined that given the variety of ways in which fax numbers may be distributed, it was appropriate to treat the issue of consent in any complaint on a case-by-case basis. We seek comment on the circumstances in which facsimile numbers are distributed or published by individuals and businesses. We invite comment specifically on the issue of membership in a trade association or similar group. For example, should the publication of one's fax number in an organization's directory constitute an invitation or permission to receive an unsolicited fax? The Commission also seeks comment on what effect its case-by-case analysis has had on the number of unsolicited faxes sent to consumers and on costs incurred by the recipients of such faxes.

(ii) Established Business Relationship

29. We seek comment on the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive telephone facsimile advertisement transmissions. This determination has amounted to an effective exemption from the prohibition on sending unsolicited facsimile advertisements, although our rules do not expressly provide for such an exemption. We ask whether, in practice, the Commission's previous determination has served to protect ongoing business relationships and whether it has had any adverse impact on consumer privacy. If we were to preserve the "exemption," should we amend our rules to expressly provide for it? We also seek comment on the need to clarify the scope of the "exemption." For instance, should a company that has an established relationship with a customer based on one type of product or service also be allowed to send unsolicited faxes about a different service or product? We invite comment on a consumer's authority to stop faxes to his facsimile number from a business with which he has an established relationship. Is it necessary for the Commission to adopt rules to protect consumers from unsolicited faxes in such circumstances?

(iii) Fax Broadcasters

30. We seek comment on whether the Commission should address specifically in the rules the activities of "fax

broadcasters" who transmit other entities' advertisements to a large number of telephone facsimile machines for a fee. In the *TCPA Order*, the Commission stated that "[i]n the absence of a 'high degree of involvement or actual notice of an illegal use and failure to take steps to prevent such transmissions,' common carriers will not be held liable for the transmission of a prohibited facsimile message." When asked whether common carriers' exemption from liability extended to entities that engage in fax broadcasting but are not common carriers, the Commission found that "[t]he entity or entities on whose behalf facsimiles are transmitted are ultimately liable for compliance with the rule banning unsolicited facsimile advertisements, and that fax broadcasters are not liable for compliance with the rule." In a later order further addressing fax broadcasters' obligations under the TCPA rules, the Commission stated that "[f]acsimile broadcast service providers are businesses or individuals that transmit messages on behalf of other entities to selected destinations and that do not determine either the message content or to whom they are sent." Some fax broadcasters maintain lists of telephone facsimile numbers that they use to direct their clients' advertisements. This practice, among others, indicates a fax broadcaster's close involvement in sending unlawful fax advertisements and may subject such entities to enforcement action under the TCPA and our existing rules. Based on the number of complaints and inquiries the Commission has received in the last few years on unwanted faxes, and the apparent prevalence of fax broadcasters that determine the destination of their clients' advertisements, we seek comment on whether the Commission should address specifically in the rules the activities of such fax broadcasters. Should the Commission amend the rules to state explicitly that certain fax broadcasting practices expose the fax broadcaster to liability under the TCPA and the Commission's rules? Should the Commission specify by rule the particular activities that would demonstrate a fax broadcaster's "high degree of involvement" in the unlawful activity of sending unsolicited advertisements to telephone facsimile machines? Would such a rule afford consumers a greater measure of protection from unlawful faxing than they already enjoy under existing rules? Would such a rule better inform the business community about the general

prohibition on unsolicited fax advertising? Have the Commission's rules that require fax advertisements to identify the entity on whose behalf the messages are sent been effective at protecting consumers' rights to enforce the TCPA?

h. Wireless Telephone Numbers

31. The TCPA and the Commission's rules specifically prohibit telephone calls using an autodialer or an artificial or prerecorded voice message to any telephone number assigned to a paging service, cellular telephone service, or any service for which the called party is charged for the call, except in emergencies or with the prior express consent of the called party. The Commission's rules also state that live telephone solicitations to residential telephone subscribers must comply with time of day restrictions and must institute procedures for maintaining do-not-call lists. The Commission has not opined on whether wireless subscribers or a subset thereof are "residential telephone subscribers" for purposes of these restrictions.

32. Since 1991, the commercial wireless industry has grown dramatically, both in the number of subscribers and the amount of usage for each subscriber. A USA Today/CNN/Gallop poll found that almost one in five mobile telephony users regard their wireless phone as their primary phone. Also, many wireless consumers purchase large "buckets" of minutes at a fixed rate, which may have an impact on the way consumers perceive the costs of making and receiving calls on their wireless phones.

33. We seek comment on the extent to which telemarketing to wireless consumers exists today. Specifically, we seek comment on whether consumers receive solicitations on their wireless phones, and the nature and frequency of such solicitations. We also seek comment on whether telemarketers are including or targeting wireless phone numbers in their telemarketing calls. Do telemarketers distinguish between wireless and wireline phone numbers and, if so, how?

34. In addition, we seek comment on whether the Commission's TCPA rules are sufficient to address any issues identified above, or whether any revisions are necessary. For example, should wireless telephone numbers or a subset thereof be considered "residential telephone numbers" for the purposes of the Commission's rules on telephone solicitations? If so, should there be any different rules that apply to solicitations to wireless telephone

numbers than already would apply under § 64.1200(e)?

35. We note that the TCPA permits the Commission to exempt from the restrictions on autodialer or prerecorded message calls to wireless phone numbers "calls to a telephone number assigned to a cellular telephone service that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights this section is intended to protect." In the *TCPA Order*, the Commission concluded that calls made by cellular carriers to their subscribers for which the subscribers were not charged do not fall within the prohibitions on autodialers or prerecorded messages. We seek comment on whether there are other types of calls to wireless telephone numbers that are not charged to the called party, and whether such calls also should not fall within the prohibitions on autodialers or prerecorded messages.

36. Lastly, we seek comment on any developments anticipated in the near future that may affect telemarketing to wireless phone numbers. For example, when consumers are able to port numbers from their wireline phones to wireless phones, or are assigned numbers from a pool of numbers rather than from a full central office code, how will telemarketers identify wireless numbers in order to comply with the TCPA? We therefore seek comment on the availability of any technological tools that would allow telemarketers to recognize numbers that have been ported from wireline to wireless phones or to recognize wireless numbers that have been assigned from a pool of numbers that formerly were all wireline. For example, we note that the public safety community is finalizing plans that would enable Public Safety Answering Points to identify the type of phone from which the caller is making an emergency call. The Number Portability Administration Center administrator, Neustar, has, however, limited access to this Interactive Voice Response (IVR) system to service providers, authorized law enforcement, and public safety agencies. Telemarketers currently do not have access to the IVR system. Should telemarketers be given access to the IVR system, or should access to the IVR system continue to be restricted to service providers, law enforcement, and public safety agencies? If telemarketers are granted access, will the IVR system be sufficient to enable them to determine whether a number serves a wireline or wireless subscriber? If telemarketers should not be given access

to the IVR system, or if this system will be insufficient to identify whether a number serves a wireless or wireline subscriber, should a different system be developed, perhaps based on the IVR system, for use by telemarketers?

i. Enforcement

(i) Private Right of Action and Individual Complaints

37. Based on the statutory language, the Commission determined that "[a]bsent state law to the contrary, consumers may immediately file suit in state court if a caller violates the TCPA's prohibitions on the use of automatic dialing system and artificial or prerecorded voice messages." The Commission also determined that the TCPA permits a consumer to file suit in state court if he or she has received more than one telephone call within any 12-month period by or on behalf of the same company in violation of the guidelines for making telephone solicitations. The Commission has continued to receive inquiries about a consumer's right to file suit against a person or entity that has made one phone call in violation of the TCPA rules. Should we clarify whether a consumer may file suit after receiving one call from a telemarketer who, for example, fails to properly identify himself or makes a call outside the time of day restrictions? In addition, telemarketers that are not common carriers are not currently subject to the informal complaint rules that require common carriers to reply to individual complaints upon notice of a complaint by the Commission. The Commission released an NPRM in February seeking comment on whether to extend the informal complaint rules to entities other than common carriers. We seek comment in this proceeding on whether the Commission should amend these informal complaint rules to apply to telemarketers.

(ii) State Law Preemption

38. In the TCPA, Congress provided a standard for preemption of state law on autodialers, artificial or prerecorded voice messages, and telephone solicitations. The TCPA does not preempt "any state law that imposes more restrictive intrastate requirements or regulations on, or which prohibits— (A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements; (B) the use of automatic telephone dialing systems; (C) the use of artificial or prerecorded voice messages; or (D) the making of telephone solicitations." The Commission seeks comment on whether

and, if so, to what degree, state requirements should be preempted. Some courts have held that the TCPA does not necessarily preempt less restrictive state laws on telemarketing. We seek comment on this interpretation. In addition, we ask whether preemption should depend on whether the state law in question applies solely to intrastate telemarketing or to interstate telemarketing as well. What conflicts between state telemarketing laws and federal law might warrant preemption?

2. National Do-Not-Call List

39. Pursuant to section 227(c)(3) of the TCPA, the Commission "may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts thereof available for purchase." In this section, we seek comment on whether the Commission should revisit its determination not to adopt a national do-not-call list. Persistent consumer complaints regarding unwanted telephone solicitations indicate that the time may now be ripe to revisit this issue. We note that a national list might provide consumers with a one-step method for preventing telemarketing calls. This option might be less burdensome than repeating requests on a case-by-case basis, particularly in light of the number of entities that conduct telemarketing today. A national list might also be less burdensome for telemarketers, who, under the company-specific approach, must retain do-not-call records for a period of ten years. We also seek comment on the options for possible Commission action in conjunction with the FTC's proposal to adopt a nationwide do-not-call list for those entities over which it has jurisdiction and the proliferation of state-adopted do-not-call lists. We acknowledge that the FTC has not yet adopted final rules based on its proposal, and we note that we have the option to seek further comment to fully address the interplay between final FTC rules and possible Commission action.

40. As discussed above, we invite comment in the context of our consideration of a national do-not-call list on the constitutional standards applicable to governmental regulation of commercial speech. Specifically, we seek comment on whether a national do-not-call list satisfies each of the standards articulated in *Central Hudson*, including the requirement that the regulation be narrowly tailored to ensure that it is no more extensive than

necessary to serve the governmental interest.

41. In declining to adopt a national do-not-call list in 1992, the Commission concluded that a national database would be costly and difficult to establish and maintain in a reasonably accurate form. The Commission found that frequent updates would be required, regional telemarketers would be forced to purchase a national database, costs might be passed on to consumers, and the information compiled would present problems in protecting consumer privacy. The Commission noted that, because nearly one-fifth of all telephone numbers change each year, any such database would require frequent updates to remain accurate. The Commission also noted concerns in protecting the privacy of telephone subscriber information including whether the confidentiality of subscribers having unpublished or unlisted numbers could be maintained.

42. We seek comment on any disadvantages to consumers or any other parties to establishing a national do-not-call list including whether the concerns noted by the Commission in declining to adopt a national do-not-call list in 1992 remain persuasive today. Specifically, we seek information regarding the potential costs of establishing and maintaining a national do-not-call database, the burdens on telemarketers of compliance with a national do-not-call database, and whether there should be any distinction on a national, regional, state, or local level or for small businesses. In particular, we seek comment on whether technological innovations in computers and software programs over the last ten years have mitigated, in any respect, concerns about the costs, accuracy, and privacy issues involved in establishing a national database. We also seek comment on how state commissions and parties involved in compiling and maintaining the state established do-not-call lists have dealt with each of these issues. The information and experience acquired by these parties in the actual operation of such databases may prove particularly useful in this analysis. We also seek comment on what effect, if any, some combination of efforts by the FTC, states, and this Commission would have on the cost and privacy issues involved in developing and maintaining a national do-not-call list. We seek comment on whether a national do-not-call list provides any advantages to telemarketers in identifying those consumers who do not wish to be contacted.

43. Section 227(c)(3) enumerates a number of specific requirements that the Commission must satisfy in adopting a national database. In relevant part, these include: (1) Specifying a method by which to select an entity to administer the database; (2) requiring each common carrier providing telephone exchange service to inform subscribers of the opportunity to object to receiving telephone solicitations; (3) specifying the methods by which subscribers may be informed, by the common carrier that provides service to the subscriber, of the subscriber's right to give or revoke a notification of an objection to receiving telephone solicitations; (4) specifying the methods by which such objections shall be collected and added to the database; (5) prohibiting any residential subscriber from being charged for giving or revoking such notification or being included in the database; (6) prohibiting any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in the database; (7) specifying the method by which any person desiring to make or transmit telephone solicitations will obtain access to the database and the costs to be recovered from such persons; (8) specifying the methods for recovering, from persons accessing the database, the cost involved in operating the database; (9) specifying the frequency with which the database will be updated and the method by which such updates will take effect; (10) designing the database to enable states to use it to administer or enforce state law; (11) prohibiting the use of the database for any purpose other than compliance with the requirements of section 227 and any such state law, and specifying methods for protection of the privacy rights of persons whose numbers are included in the database; and (12) requiring each common carrier providing services to any person for the purpose of making telephone solicitations to notify such persons of the requirements of this section and the regulations thereunder. We seek comment on what possible options the Commission might pursue that would satisfy the requirements listed above, as well as complement the FTC's proposal and the individual state do-not-call statutes and regulations. We note that while the FTC's proposal could incorporate some, if not all, of the twelve criteria above, the FTC is not required by statute to satisfy these requirements. Therefore, we ask whether these twelve requirements would preclude the Commission from adopting rules requiring common carriers and other entities under our

TCPA jurisdiction to comply with a national do-not-call regime administered by the FTC, should the FTC adopt rules that are inconsistent with the TCPA.

44. We recognize that the effectiveness and value of any national do-not-call list would be contingent upon an informed public. As noted above, Congress provided that, should the Commission establish a national do-not-call list, each common carrier providing telephone exchange service shall be required to inform its subscribers of the opportunity to object to telephone solicitations and the option to register with a national do-not-call list. As part of our ongoing efforts to ensure that consumers are aware of their rights under the TCPA, we will continue to disseminate our own public notices, fact sheets, and other information to publicize the rules applicable to telemarketing calls. In addition, should we establish a national do-not-call list, we propose adopting rules that codify the statutory provisions requiring common carriers to notify their subscribers of the opportunity to place their telephone numbers on a national do-not-call list. We seek input on this proposal and any other suggestions to ensure that consumers are well informed.

45. *FTC Proposal to Adopt a Nationwide Do-Not-Call List.* As noted above, the FTC has recently issued a Notice of Proposed Rulemaking seeking comment on a number of potential amendments to its Telemarketing Sales Rule. In relevant part, the FTC proposes to adopt a national do-not-call list that would allow consumers to prohibit calls from any telemarketer within the FTC's jurisdiction by placing their telephone number on a central registry to be maintained by, or on behalf of, the FTC. Because the FTC lacks jurisdiction over banks, common carriers, insurance companies, and certain other entities, these entities could continue to make telemarketing calls to individuals on the FTC's do-not-call list. We seek comment on whether the Commission should use its authority under the TCPA to extend any national do-not-call requirements adopted by the FTC to those entities that fall outside the FTC's jurisdiction. If so, we seek comment on what role the Commission should play in the administration and enforcement of a national database.

46. If the Commission should determine that a national do-not-call list is warranted, we seek comment on what actions the Commission could take to most efficiently, effectively, and consistently complement the FTC's proposal. The FTC indicates that its do-

not-call proposal is consistent with the Commission's regulations and should "not be construed to permit any conduct that is precluded or limited by FCC regulations." If inconsistencies exist at the end of the rulemakings, would this create confusion regarding the applicability and enforcement of the do-not-call requirements to certain entities? For example, the FTC proposes to extend the do-not-call requirement to telemarketing calls from "for-profit entities" that solicit charitable contributions. In so doing, the FTC indicates that its authority extends not only to the sale of goods or services but also to charitable solicitations by for-profit entities on behalf of nonprofit organizations. The Commission has concluded, however, that its regulations under the TCPA apply only to commercial calls. In addition, the TCPA specifically excludes "tax exempt nonprofit organizations" from its provisions. The Commission has concluded that this exemption for nonprofit organizations extends to telephone solicitations made by telemarketers on behalf of tax-exempt nonprofit organizations. We seek comment on whether this interpretation raises possible inconsistencies with the FTC's proposal. If so, we seek comment on how these inconsistencies could be reconciled in the administration of any national do-not-call database.

47. The FTC's proposal also may allow some business and wireless telephone subscribers to register on the national database. The TCPA, however, only grants authority to the Commission to establish a national database for residential subscribers. We seek comment on the extent to which wireless subscribers may be considered "residential" for purposes of the TCPA. In addition, we seek comment on what, if any, conflict exists under the FTC's rules and proposals and the TCPA regarding inclusion of business consumers on the national do-not-call list. The FTC proposal also does not indicate whether consumers will be charged a fee for including their names on the national do-not-call database. We note that the TCPA prohibits the Commission from charging residential consumers to be included in the database. We seek comment on whether these and any other issues that commenters may identify raise potential areas of concern in coordinating the FTC's proposals with any Commission action. To the extent that any such inconsistencies exist, we seek suggestions as to how they could be reconciled to minimize the potential for confusion to consumers, telemarketers,

and regulators in the administration and enforcement of any national do-not-call database established under the combined authority of the FTC and the Commission.

48. We also seek comment on whether the Commission should adopt any new rules or revise any of its existing rules to remain consistent with the proposals of the FTC. For example, the FTC proposes that consumers who have placed themselves on the national do-not-call registry "could allow telemarketing calls from or on behalf of specific sellers, or on behalf of charitable organizations, by providing express verifiable authorization to the seller, or telemarketer making calls on behalf of a seller or charitable organization, that the consumer agrees to accept calls from that seller or telemarketer." The FTC also proposes adopting certain recordkeeping requirements that must be met before companies may avail themselves of the "safe harbor" protections for violating the do-not-call rules. In so doing, the FTC notes that the Commission's rules are silent as to any such requirements to reconcile names or numbers on a national registry because our rules relate only to company-specific lists. We seek comment on whether, if the Commission implements a national database with the FTC, the Commission should adopt recordkeeping or other rules that mirror those proposed by the FTC.

49. Finally, we note that the FTC has sought comment on establishing a national do-not-call registry for a two-year trial period, after which it may review the costs and benefits of the central registry in order to determine whether to modify or terminate its operation. We seek comment on how this could affect any Commission decision to establish a joint database with the FTC, including whether the Commission should commit to a similar review at the same time. We also seek comment on what, if any, disruptions this may cause consumers if the FTC determines at that time to terminate the operation of its national do-not-call database. Finally, we note that the FTC has released a Privacy Act Notice specifying the measures it intends to take to ensure the privacy of consumers in compiling and maintaining the national registry. In its Notice, the FTC proposes to collect certain information including, at a minimum, telephone numbers of individuals who do not wish to receive telemarketing calls. To the extent necessary, the FTC may collect other information such as date(s) and time(s) that the individual's telephone number was placed on the

registry; the individual's specific telemarketing preferences; and other identifying information that individuals may provide voluntarily (e.g., residential zip codes for record sorting purposes). The FTC expects to use automated methods to collect the information and to process requests from individuals seeking access to their records in the system. The FTC states that it intends to maintain these records in a secure electronic database operated by that agency and/or contractor personnel bound by the restrictions of the Privacy Act. We seek comment on whether the Commission should impose any requirements beyond those proposed by the FTC to ensure that consumer proprietary information would be protected in a national database.

50. *State Do-Not-Call Lists.* As noted above, a number of states have adopted or are considering legislation to establish statewide do-not-call lists. Such state lists vary widely in the methods used for collecting data, the fees charged, and the types of entities required to comply with their restrictions. Some state statutes provide for state-managed do-not-call lists, while others require telemarketers to use the Direct Marketing Association's Telephone Preference Service. In some states, residents can register for the do-not-call lists at no charge. In others, telephone subscribers must pay a fee. The state "do-not-call" statutes provide for varying exceptions to the do-not-call requirements. In the context of our review of the national do-not-call database, we seek comment on how effective these state administered do-not-call lists have been in curbing unwanted telephone solicitations and whether a national database would correct any of the shortcomings of the state lists.

51. If the Commission should establish a nationwide do-not-call list in conjunction with the FTC, we seek comment on the potential relationship of that database to state do-not-call laws. We seek comment on the potential role that states could play in administering and enforcing federal do-not-call requirements. We believe that many states have obtained valuable experience and insight into the administration of the do-not-call lists in their respective states. We therefore seek comment from the states, and any other interested parties, on the following options to incorporate state expertise in this process. We also invite additional suggestions on these or any alternative proposals.

52. First, we seek comment on whether those states that have adopted

do-not-call laws should administer those laws to the extent that they apply to intrastate telemarketing calls, while the federal law would govern interstate telemarketing. Under such circumstances, we seek comment on whether the Commission should establish a regulatory scheme similar to that developed with the Commission's "slamming" rules that would allow states to "opt-in" and thereby co-administer and enforce the federal interstate do-not-call rules in their respective states. Consistent with the Commission's slamming regulations, states that "opt-in" would be required to write and interpret their statutes and regulations for telemarketing calls in a manner that is consistent with the federal rules. States would be allowed to adopt more restrictive rules for intrastate telemarketing calls if such action is necessary based on its local experiences. Consumers residing in states that decided not to "opt-in" would be allowed to register with the administrator of the federal do-not-call database. These consumers would register and file do-not-call complaints regarding both unwanted intrastate and interstate telephone solicitations with the appropriate federal regulatory entity.

53. We seek comment on whether this proposal is administratively feasible, including whether it is possible and/or necessary for regulators and consumers to distinguish intrastate from interstate telemarketing calls. We note that in comments filed in the FTC proceeding, the Attorneys General of all fifty states, Puerto Rico, and the Northern Mariana Islands, indicated that states have enforced their own do-not-call laws against telemarketers irrespective of whether such calls are intrastate or interstate in nature. The Attorneys General contend that states have historically enforced their consumer protection laws within, as well as across, state lines to prosecute out-of-state companies that have contacted their residents over the telephone. We seek comment on this interpretation of state authority to regulate telemarketing calls originating outside of the state.

54. Second, we seek comment on how we could work together with states that have adopted do-not-call lists. The state Attorneys General argue that the states have the authority to enforce their own no-call laws against telemarketers across the country. Although many states have adopted laws that differ in some respects from the FTC's proposal, these differences may be reflective of the particularized circumstances of consumers and telemarketers in that state. In this context, the federal do-not-call database could act either as a

default mechanism for those states that have not adopted do-not-call laws or coexist with the state do-not-call laws to provide consumers with additional safeguards.

55. Under this approach, there would be no disruption to consumers in the administration and enforcement of the state regulations as applied to interstate calls. In this context, we seek comment on whether consumers in states that have adopted do-not-call laws should be restricted solely to registering on the state database or should also be allowed the option to register on any federal national do-not-call database. If consumers are allowed the option to register on both databases, we seek comment on whether the federal database should permit states to submit do-not-call requests from their own database and to obtain from the federal database any requests from their own state. As noted above, states have adopted a variety of do-not-call laws, some of which may be less restrictive of telemarketing activity than the regulations proposed by the FTC. We therefore seek comment on whether the administration of both a state and federal do-not-call database would be feasible, including whether this approach may lead to consumer confusion or duplicative administrative costs. In this regard, we seek suggestions on how the federal and state regulatory entities should coordinate their efforts, including providing adequate information to consumers.

56. Finally, we invite comment on additional proposals to reconcile the administration of any national do-not-call list with the various state lists. For example, the Commission has received inquiries regarding whether the Commission may also consider preempting the state do-not-call statutes, in whole or in part, under the theory that Congress has legislated comprehensively in this area, thus occupying the entire field of regulation and leaving no room for the states to supplement federal law. This issue has never been addressed on the Commission level, leading to uncertainty among states and telemarketers. In addition, the legislative history indicates that Congress believed the TCPA was necessary because states may lack jurisdiction to regulate interstate telemarketing calls. We seek comment on whether there are any advantages to a single national database over a collection of state do-not-call laws. Alternatively, we seek comment on whether the development of state do-not-call lists obviates the need for a national list. We also seek comment on

whether preemption of state do-not-call lists would result in substantial confusion for those consumers that may have already registered in states that have adopted do-not-call lists. Similar to our discussion above, we seek comment in this context on whether the states could be allowed to "opt-in" and thereby co-administer and enforce the federal do-not-call rules in their respective states.

II. Procedural Issues

A. *Ex Parte* Presentations

57. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

B. *Initial Regulatory Flexibility Analysis*

58. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic effect on small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the NPRM provided below in the Comment Filing Procedures section. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

59. Since 1992, when the Commission adopted rules pursuant to the TCPA, telemarketing practices have changed significantly. New technologies have emerged that allow telemarketers to better target potential customers and make marketing using telephones and facsimile machines more cost-effective. At the same time, these new telemarketing techniques have heightened public concern about the effect on consumer privacy. The Commission has received numerous inquiries and complaints involving its rules on telemarketing and unsolicited fax advertisements. A growing number of states have passed or are considering legislation to establish statewide do-not-call lists, and the FTC has proposed establishing a national do-not-call registry. Congress provided in the TCPA that "individuals" privacy rights, public

safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices. In this NPRM, we seek comment on whether the Commission's rules need to be revised in order to more effectively carry out Congress's directives in the TCPA. Specifically, we seek comment on whether to revise or clarify our rules governing unwanted telephone solicitations and the use of automatic telephone dialing systems, prerecorded or artificial voice messages and telephone facsimile machines. In addition, we seek comment on the effectiveness of company-specific do-not-call lists. We also seek comment on whether the Commission should revisit its determination not to adopt a national do-not-call list. In so doing, we seek comment on the options for possible Commission action in conjunction with the FTC's proposal to adopt a national do-not-call registry for those entities over which it has jurisdiction and the proliferation of state-adopted do-not-call lists. We seek comment on these issues, as well as any alternative means of protecting consumers' privacy while avoiding imposing unnecessary burdens on the telemarketing industry, consumers, and regulators.

2. Legal Basis

60. The legal basis for any action that may be taken pursuant to this NPRM is contained in sections 1 thru 4, 227 and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 151 thru 154 and 227; and 47 CFR 64.1200 and 1201 of the Commission's rules.

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

61. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

62. The Commission's rules on telephone solicitation and the use of

autodialers, artificial or prerecorded messages and telephone facsimile machines apply to a wide range of entities, including all telecommunications carriers and other entities that use the telephone or facsimile machine to advertise. Thus, we expect that the proposals in this proceeding could have a significant economic impact on a substantial number of small entities. In 1992, there were approximately 4.44 million small business firms in the United States, according to SBA data. The SBA has determined that "telemarketing bureaus" with \$6 million or less in annual receipts qualify as small businesses. For 1997, there were 1,727 firms in this category, total, which operated for the entire year. Of this total, 1,536 reported annual receipts of less than \$5 million.

63. Determining a precise number of small entities that would be subject to the requirements proposed in this NPRM is not readily feasible. Therefore, we invite comment about the number of small business entities that would be subject to the proposed rules in this proceeding. After evaluating the comments, the Commission will examine further the effect any rule changes might have on small entities, and will set forth our findings in the final Regulatory Flexibility Analysis.

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

64. We are seeking comment on whether to amend the Commission's TCPA rules and/or to revisit the option of establishing a national do-not-call list. The proposed rules will apply, with certain exceptions, to all entities making telephone solicitations or using automatic telephone dialing systems, prerecorded or artificial voice messages or telephone facsimile machines to send unsolicited advertisements. If we retain the company-specific do-not-call approach, we seek comment on whether to require companies to provide a toll-free number and/or website for consumers to register their names on the do-not-call lists. We also seek comment on whether additional measures should be taken to ensure that consumers with disabilities can register their do-not-call requests. Any such measures, if adopted, may involve additional costs to businesses. If we find that establishing a national do-not-call list is warranted, we must determine the entity that will maintain the list and the procedures for administering the list. For small businesses whose call lists are not automated, scrubbing lists could be more labor-intensive and thus, more

time-consuming and costly. However, we do not anticipate that such recordkeeping will require the use of professional skills, including legal and accounting expertise. In this NPRM, we seek information regarding the burdens on telemarketers to comply with a national do-not-call database, including the requirements to obtain a national list of telephone numbers and to incorporate those numbers into telemarketers' individual do-not-call lists. Entities, especially small businesses, are encouraged to quantify the costs and benefits of a national do-not-call list, as well as the costs and benefits of any possible new rules regarding certain telemarketing technologies and practices. Finally, the TCPA under section 227(c)(3) provides that should the Commission adopt a national do-not-call list, common carriers shall be required to inform subscribers of the option to register on a national do-not-call list. We seek input on this proposal and any other suggestions to ensure the public is well-informed.

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

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

66. This NPRM invites comment on a number of alternatives to modify the existing TCPA rules on telephone solicitation and the use of autodialers, artificial or prerecorded messages, and telephone facsimile machines. The Commission also will consider additional significant alternatives developed in the record. We seek comment on the effectiveness of company-specific do-not-call lists and whether the benefits of individual company lists continue to outweigh the costs to telemarketers. We also seek comment on whether any network technologies have been developed over the last decade that could serve as alternatives to do-not-call lists. We ask whether any such technologies are effective, universally available, and

affordable to consumers in allowing consumers to curb unwanted telephone solicitations. In addition, we seek comment on a number of proposals such as requiring a maximum setting on the number of abandoned calls, requiring telemarketers to transmit caller ID information or prohibiting them from blocking such information. We also ask whether revisiting the established business relationship exemption would interfere with ongoing business relationships, particularly for small businesses.

67. We also seek comment on options for possible Commission action in conjunction with the FTC's proposal to establish a national do-not-call registry. A national do-not-call list might provide consumers with a one step method to avoid unwanted sales calls and assist telemarketers in identifying those consumers who do not wish to be contacted. We seek information, however, about the potential costs of establishing and maintaining a national list and about the burdens on telemarketers of complying with a national do-not-call list. Specifically, we ask whether there should be any distinctions for small businesses that must comply with a national do-not-call registry. We also ask whether consumers listed on a national registry should be permitted to also provide express verifiable authorization to those businesses from whom they want to receive calls.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

68. The Telemarketing Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. 6101 thru 6108, and the Telemarketing Sales Rule (TSR) adopted by the FTC also address certain telemarketing acts or practices. The TCPA and Commission rules currently do not duplicate, overlap or conflict with the Telemarketing Act or TSR; however, there are provisions in the FTC's rules that mirror the Commission's rules, such as the calling time restrictions. It is difficult to determine at this time whether any of the proposals contained in this NPRM might conflict with any other federal rules, given that the FTC has undertaken a rulemaking proceeding of its own. Therefore, we ask in the NPRM whether any inconsistencies at the end of the rulemakings would create confusion regarding the applicability and enforcement of the do-not-call requirements to certain entities. For instance, the FTC proposes to extend its do-not-call requirements to telemarketing calls from "for-profit

entities" that solicit charitable contributions; the Commission has concluded that its regulations apply only to commercial calls. The FTC's proposal also appears to allow some business and wireless telephone subscribers to register on the national database, while the TCPA grants authority to the Commission to establish a national database only for residential subscribers. Therefore, the Commission invites comment in this NPRM on whether we could adopt any new rules or revise any of our existing rules to remain consistent with the FTC's proposals.

C. Filing of Comments and Reply Comments

69. We invite comment on the issues and questions set forth above. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before November 22, 2002, and reply comments on or before December 9, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings* (63 FR 24121, May 1, 1998).

70. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's

contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Kelli Farmer, Federal Communications Commission, Room 4-C740, 445 12th Street, SW., Washington, DC 20554.

71. Written comments by the public on the proposed and/or modified information collections are due on or before November 22, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before December 9, 2002. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

72. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin of the Consumer & Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov.

III. Ordering Clauses

73. The Notice of Proposed Rulemaking is adopted.

74. The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02-25569 Filed 10-7-02; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 177

Federal Motor Carrier Safety Administration

49 CFR Part 397

[Docket No. FMCSA-02-11650 (HM-232A)]

RIN 2137-AD70, 2126-AA71

Security Requirements for Motor Carriers Transporting Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), and Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Supplemental advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Research and Special Programs Administration (RSPA) and the Federal Motor Carrier Safety Administration (FMCSA) published a July 16, 2002 Advance Notice of Proposed Rulemaking (ANPRM) seeking comments on the feasibility of implementing security enhancement requirements for motor carriers transporting hazardous materials, and the potential costs and benefits of deploying such enhancements. After receiving a request from an industry association to put a procedure in place to protect potentially security-sensitive comments, we are informing commenters of the procedures currently set forth in RSPA's regulations for requesting confidential treatment. Thus, we are removing the sentence in the ANPRM indicating that "comments that include information that may compromise transportation security will be disqualified as beyond the scope of the rulemaking." We will consider all comments received. All comments will be placed in the rulemaking docket unless they, or a portion thereof, are determined to be confidential and thereby protected from disclosure under the law. In this supplement to the ANPRM, we are also extending the comment period for an additional 31 days to November 15, 2002.

DATES: Submit comments on or before November 15, 2002. To the extent possible, we will consider late-filed comments as we consider further action.

FOR FURTHER INFORMATION CONTACT: Donna O'Berry, (202) 366-4400, Office of the Chief Counsel, Research and Special Programs Administration; Susan Gorsky, (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration; or William Quade, (202) 366-6121, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration.

SUPPLEMENTARY INFORMATION: RSPA and FMCSA published a July 16, 2002 ANPRM entitled "Security Requirements for Motor Carriers Transporting Hazardous Materials." See 67 FR 46622. In that rulemaking document, RSPA and FMCSA are examining the feasibility of implementing specific enhanced security requirements for motor carriers transporting hazardous materials, and the potential costs and benefits of deploying such enhancements. In the July 16 ANPRM, we set out seven questions and invited commenters to submit data and information in response to those questions.

Because the ANPRM addressed measures to enhance the security of hazardous materials in transportation, we urged commenters to carefully consider the information they submitted in response to the questions posed. After the ANPRM was published, we received an industry association letter indicating that it planned to file comments and stating "however, we are concerned that the public dissemination of these comments could compromise our national security by providing information that could later be exploited by terrorists with access to such information." The association requested that we establish a procedure to safeguard those comments.

After reviewing this request, we have decided to supplement the ANPRM to inform the public of the procedures currently in RSPA's regulations for requesting confidentiality. (These procedural regulations were recently rewritten in plain language and published on June 25, 2002 [67 FR 42948].) Under 49 CFR 105.30, if you submit information to us, you may ask us to keep the information confidential. This section explains the steps you should follow: (1) Mark "confidential" on each page of the original document you would like to keep confidential, (2) send us, along with the original document, a second copy of the original document with the confidential information

deleted, and (3) explain why the information is confidential (for example, it is exempt from mandatory public disclosure under the Freedom of Information Act (FOIA) [5 U.S.C. 552] because it is confidential commercial information). See 67 FR 42953.

In your explanation, you should provide enough information to enable us to make a determination as to the confidentiality of the information provided. In addition, if you believe that certain laws or FOIA exemptions might apply to protect the information, you should reference those legal citations.

The FOIA requires that we release any nonexempt (not protected under FOIA) portions of information that can be reasonably segregated. Therefore, we ask that you identify the particular portions of information within your documents that you believe are confidential. If the non-confidential information is so intertwined with the confidential information that disclosing it would leave only meaningless words and phrases, the entire page or document may be withheld.

After reviewing your request for confidentiality and the information provided, we will analyze all applicable laws to decide whether or not to treat the information as confidential. We will notify you of our decision to grant or deny confidentiality at least five days before the information is publicly disclosed, and give you an opportunity to respond. See 105.30(b).

If, prior to submitting your request, you have any questions regarding RSPA's procedures for determining confidentiality, you may call one of the contact individuals above for more information.

The July 16 ANPRM included a statement that we would disqualify information received in comments that could compromise transportation security as beyond the scope of the rulemaking. In light of the fact that RSPA's regulations provide a process for requesting confidentiality, all comments will be part of the docket, unless comments or portions of comments are determined to be confidential and protected from disclosure under law. Information determined to be confidential will be redacted and the unredacted portions will be placed in the docket.

The ANPRM provided an October 15, 2002 deadline for filing comments. In conjunction with informing the public of our procedures for requesting confidentiality, we are also extending the comment period deadline to November 15, 2002 to provide commenters with an additional 30 days

to file comments. We will consider late-filed comments to the extent possible.

Issued in Washington, DC on October 1, 2002, under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

Julie A. Cirillo,

Assistant Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 02-25463 Filed 10-7-02; 8:45 am]

BILLING CODE 4910-60-P; 4910-EX-P

Notices

Federal Register

Vol. 67, No. 195

Tuesday, October 8, 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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Notice of Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on October 21, 2002, from 8:30 am to 5 pm.

ADDRESSES: The meeting will be held at the Wyatt Company, 303 West Madison Street, Board Room, Chicago, IL.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries, 202-694-1891.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Wyatt Company, 303 West Madison Street, Board Room, Chicago, IL on Monday, October 21, 2002, from 8:30 am to 5 pm.

The purpose of the meeting is to discuss topics and questions, which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: September 30, 2002.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 02-25620 Filed 10-7-02; 8:45 am]

BILLING CODE 4830-01-P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development; One Hundred and Thirty Fifth Meeting, Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and thirty-fifth meeting of the Board for International Food and Agricultural Development (BIFAD). Notice may be published less than fifteen days prior to the meeting due to scheduling conflicts. The meeting will be held from 8 a.m. to 1 p.m. on October 17, 2002 in the Oceanic A&B Meeting Rooms on the Concourse Level of the Ronald Reagan Building (RRB), 1300 Pennsylvania Avenue, NW, Washington, DC.

The program will be devoted to the inauguration of a new Board, a discussion of long-term training, and USAID Bureau reports on the status of agricultural or rural livelihoods and the involvement of universities.

The meeting is free and open to the public. Those wishing to attend the meeting or obtain additional information about BIFAD should contact Mr. Lawrence Paulson, the Designated Federal Officer for BIFAD. Write him in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW, Room 2.11-073, Washington, DC 20523-2110 or telephone him at (202) 712-1436 or fax (202) 216-3010.

Lawrence Paulson,

USAID Designated Federal Officer for BIFAD, Office of Agriculture and Food Security, Bureau for Economic Growth, Agriculture & Trade.

[FR Doc. 02-25600 Filed 10-7-02; 8:45 am]

BILLING CODE 6116-01-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Value-Pass-Through of USDA Donated Commodities in Food Service Management Company Fixed-Rate-Per-Meal Contracts

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Food and Nutrition Service, Food Distribution Division, will hold a meeting to discuss methods of value-pass-through of USDA donated commodities in food service management company fixed-rate-per-meal contracts in the National School Lunch Program. The purpose of this meeting is to offer State agencies, school food authorities, advocacy groups, food service management companies, and other interested parties the opportunity for dialogue prior to proposed rulemaking.

DATE AND TIME: Thursday, October 24, 2002, 1 p.m. to 5 p.m.

ADDRESSES: Food and Nutrition Service, 3101 Park Center Drive, Conference Room 204-B, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION: In April 2002, the USDA Office of Inspector General issued Audit Report Number 27601-0027-CH titled "National School Lunch Program—Food Service Management Companies," which found that, in the States reviewed by the Office of Inspector General, many school food authorities that maintained fixed-rate-per-meal contracts did not receive proper credit for USDA donated commodities. Federal regulations require that any USDA donated commodities received by a school food authority and made available to a food service management company shall be used solely for the school food authority's food service operation and that the full value of all USDA donated food must accrue to the benefit of the school food authority.

The discussion topics of this meeting will be limited to (a) the Office of Inspector General's recommended approach for crediting USDA donated commodities, (b) value-pass-through methods currently used by food service management companies and school food authorities in food service management

contracts, and (c) proposals for the development of new specific procedures for crediting USDA donated commodities.

For those unable to attend the meeting or those who attend and have additional comments on the discussion topics, the contact person named below will accept written statements before the meeting and until Friday, November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Suzanne Rigby, Branch Chief, Schools and Institutions Branch, Food Distribution Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 500, Alexandria, Virginia 22302, (703) 305-2644. To confirm attendance, please contact Sherry Thackeray at (703) 305-2652 or e-mail Sherry.Thackeray@fns.usda.gov. Confirmation of attendance is encouraged, but not mandatory for participation in this meeting. Office of Inspector General audit report is available on the Office of Inspector General's Internet Web site at <http://www.usda.gov/oig/webdocs/27601-27-Ch.pdf>. A copy may also be requested by contacting Sherry Thackeray.

Dated: October 2, 2002.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 02-25581 Filed 10-7-02; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Comprehensive Management of Nutria Herbivory Damage in Coastal Louisiana and Coastwide Nutria Control Program (LA-03b) in Coastal Louisiana

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102 (2) (C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Comprehensive Management of Nutria Herbivory Damage in Coastal Louisiana and the Coastwide Nutria Control Program (LA-03b), Coastal Louisiana.

FOR FURTHER INFORMATION, CONTACT:

Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473-7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of the federally assisted action indicates that the action will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that preparation and review of an environmental impact statement is not needed for this project.

The recommended plan consists of (1) implementing an incentive payment program to encourage the harvest of up to 400,000 nutria annually from coastal Louisiana by payment of \$4.00 per nutria tail to registered program participants (Coastwide Nutria Control Program LA-03b), (2) investigating techniques to promote revegetation of damaged sites with native vegetation, and (3) pursuing additional funding and/or funding sources to conduct more comprehensive revegetation. The goal of the recommended plan is to reestablish the ecological balance (plant and animal) that existed when the number of nutria harvested was high. It is predicted that the plan would reduce the conversion of fresh, intermediate, and brackish marsh to open water by about 15,000 acres over 20 years.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data collected during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Donald W. Gohmert,
State Conservationist.

[FR Doc. 02-25490 Filed 10-7-02; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue three revised conservation practice standards in Section IV of the FOTG. The revised standards are: Pond (378), Pipeline (516) and Forest Trails and Landings (655). These practices may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to darrell.brown@in.usda.gov.

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317-290-3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: September 23, 2002.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 02-25489 Filed 10-7-02; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF COMMERCE**Office of the Secretary**

[Docket No. 020430099-2226-02]

RIN 0690-XX07

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: Section 515 of Public Law 106-554, the Treasury and General Government Appropriations Act for Fiscal Year 2001, directs the Office of Management and Budget (OMB) to issue government-wide guidelines that "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies." The OMB guidelines require that agencies subject to the OMB guidelines must establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the OMB guidelines or the agency guidelines. The OMB final guidelines were published in the **Federal Register** on February 22, 2002. Those guidelines direct that, by October 1, 2002, agencies publish their information quality guidelines.

The Department of Commerce published its draft guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of disseminated information on its Internet Web site on May 1, 2002 and in the **Federal Register** on May 3, 2002 (67 FR 22398). The Department of Commerce's response to the comments received is included in the **SUPPLEMENTARY INFORMATION** section of this document.

This document implements section 515 for the Department of Commerce and defines the Department of Commerce's information quality guidelines. It may be revised periodically, based on experience, evolving requirements in the Department of Commerce, and concerns expressed by the public.

ADDRESSES: Correspondence should be sent to Thomas N. Pyke, Jr., Chief Information Officer, Department of Commerce, 14th St. and Constitution Ave. NW, Room 5029B, Washington, DC 20230. Send e-mail to informationquality@doc.gov. Department of Commerce operating

units will publish their information quality standards on the Web sites listed in the **SUPPLEMENTARY INFORMATION** section of this document.

Correspondence on the operating unit standards should be addressed directly to the contact noted in the operating unit standards.

FOR FURTHER INFORMATION CONTACT: Diana H. Hynek, Office of the Chief Information Officer, Department of Commerce, 14th St. and Constitution Ave. NW., Room 6625, Washington, DC 20230. Telephone (202) 482-0266 or by e-mail to dhynek@doc.gov.

SUPPLEMENTARY INFORMATION:**Background**

The U.S. Department of Commerce ("Commerce" or "Department") is one of the most diverse Federal departments, both in terms of its mission and the information it provides to the public. We are responsible for daily weather reporting, facilitating the use of technology both at home and in the workplace, collecting statistics that assist the public and private sector, and supporting the environmental and economic health of U.S. communities. Our mission is to promote job creation and improve living standards for all Americans by creating an infrastructure that encourages economic growth, technological competitiveness, and sustainable development, conservation, and wise use of living marine resources.

To carry out this mission, three strategic goals have been identified. They are to provide the information and the framework to enable the economy to operate efficiently and equitably; provide the infrastructure for innovation to enhance U.S. competitiveness; and observe and manage the Earth's environment to promote sustainable growth.

Commerce provides the basic economic data necessary to develop sound business decisions, producing many of the commonly used economic statistics issued by the U.S. Government. The Department also produces information designed to encourage the use of science and technology in the production of consumer goods and services.

Commerce plays an important role in the nation's global business development. The Department develops and disseminates foreign market research and international trade opportunities through its offices in the United States and in 83 foreign countries. Commerce also monitors and enforces compliance with U.S. trade laws and agreements, and defends American firms from injurious foreign

business practices by administering U.S. antidumping and countervailing duty laws.

The oceanic and atmospheric programs at Commerce improve the understanding and rational use of the natural environment to further the Nation's safety, welfare, security, and commerce. These responsibilities include predicting the weather, charting the seas, and protecting the oceans and coastal areas.

Domestically, Commerce's programs promote long-term business enterprises that create jobs for minority groups and in underdeveloped areas across the United States. These programs are supported by reports, publications, projections, and business expertise. The Department provides services to citizens and private business as well as to state, local, and tribal governments.

Commerce Commitment to Information Quality

Given the broad responsibilities of the Commerce Department in scientific, technical, and statistical information, Commerce welcomes the opportunity provided by the issuance of the Office of Management and Budget information quality guidelines to demonstrate our thorough and professional approach to information release.

Our goal is to ensure and maximize the quality of the information we release to the public. We are committed to making the methods, models, and processes that produce our information transparent and rigorous. At the Commerce Department, we have a long tradition of producing relevant, credible, high quality information to the public at large, the academic community, and the private sector.

We believe that we uphold a high standard regarding information quality through the use of quality control procedures for statistical data collection and processing. The 2000 decennial census, conducted by the Census Bureau, was the most accurate census in the history of the Nation. Commerce has made significant strides in redesigning the national income and product accounts by improving the conceptual foundation and incorporating new estimating methods and other statistical improvements. Our scientific research incorporates both internal and external peer review as appropriate. The Department boasts two Nobel Prize winners in science. We operate supercomputers that rank in the Nation's top ten in processing power. These powerful computers allow us a high degree of model resolution that increases the number of data points

used to improve the accuracy of weather forecasts.

In summary, these Commerce guidelines are a continuation of our commitment to information quality. We have a proven track record in producing high quality information and welcome the opportunity to present our information quality guidelines.

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Commerce and Its Operating Units

Because of the diversity of Commerce's mission, we have taken a distributed approach to preparing our information quality guidelines. Outlined below are the responsibilities of the Department of Commerce and the responsibilities of the individual operating units of the Department.

I. Department of Commerce Responsibilities

The Department of Commerce Chief Information Officer (CIO) will prepare and submit reports annually to the Director of the Office of Management and Budget (OMB) regarding the number and nature of complaints received by the Department of Commerce regarding Department compliance with the OMB guidelines concerning the quality, objectivity, utility, and integrity of information and how such complaints were resolved, as required by section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Public Law 106-554) and the OMB Guidelines.

II. Operating Unit Responsibilities

The operating units of the Department are organizational entities outside the Office of the Secretary charged with carrying out specified substantive functions (*i.e.*, programs) of the Department. For purposes of this document, operating unit responsibilities will apply to the Office of the Secretary also.

1. By October 1, 2002, document and make available to the public information quality standards that address the requirements of quality, objectivity, utility, and integrity for all non-exempt information disseminated by the operating unit.

2. By October 1, 2002, establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the operating unit on or after October 1, 2002, that does not comply with these Department guidelines and the OMB guidelines.

The operating unit will respond to all initial requests within 60 calendar days of receipt. If the request requires more than 60 calendar days to resolve, the operating unit will inform the complainant that more time is required and indicate the reason why and an estimated decision date. The operating unit will respond to all requests for appeals within 60 calendar days of receipt. If the request requires more than 60 calendar days to resolve, the operating unit will inform the complainant that more time is required and indicate the reason why and an estimated decision date.

In cases where the operating unit disseminates a study, analysis, or other information prior to the final operating unit action or information product, requests for correction will be considered prior to the final operating unit action or information product in those cases where the operating unit has determined that an earlier response would not unduly delay issuance of the operating unit action or information product and the complainant has shown a reasonable likelihood of suffering actual harm from the operating unit's dissemination if the operating unit does not resolve the complaint prior to the final operating unit action or information product.

Note: The guidelines addressed in items 1 and 2 cover information disseminated on or after October 1, 2002, regardless of when the information was first disseminated, except that pre-dissemination review procedures shall apply only to information first disseminated on or after October 1, 2002. Covered information disseminated will comply with all applicable OMB Information Quality Guidelines as well as these Department of Commerce Information Quality Guidelines.

3. Beginning on October 1, 2002, demonstrate in the operating unit's Paperwork Reduction Act (PRA) submissions to OMB the "practical utility" of a proposed collection of information that the operating unit plans to disseminate. Additionally, for all proposed collections of information that will be disseminated to the public, demonstrate in the operating unit's PRA clearance submissions to OMB that the proposed collection of information will result in information that will be collected, maintained, and used in a way consistent with applicable information quality guidelines.

4. Assist the Department CIO in the preparation of annual reports to OMB by providing information requested by the Department CIO.

Response to Comments

The Department and its operating units received eleven responses to the request for comments. Four responses were received from public interest groups; one was from a voluntary professional association; two were from a for-profit corporation; and four were from industry associations. Some of the comments contained in the submissions were addressed either to the entire Federal government or to agencies other than the Department. In this notice, the Department is responding only to comments relevant to its applicable information quality standards. In addition, the Department has received further guidance from OMB (OMB guidance, June 10) on the development of information quality guidelines, which helps the Department respond to some of the comments. A detailed analysis of the comments, and the Department's response based on both the comments and the OMB guidance, follows.

General

Comment: Some commenters suggested that the Department and its operating units should view information quality as a "performance goal." One of these commenters requested, in particular, that the National Oceanic and Atmospheric Administration (NOAA) list the names of the component offices (*e.g.*, National Marine Fisheries Service, National Weather Service, *etc.*) that will be subject to the guidelines.

Response: In keeping with the guidance provided by OMB, the Department views its information quality guidelines as performance standards. NOAA's information quality guidelines apply to all its line (component) offices.

Comment: Some commenters suggested that the Department provide additional, subsequent opportunity in the future for further public comment on the guidelines after publication on October 1, 2002. These commenters noted that the Department's guidelines lack a centralized focus and commitment to implementation of the new information quality and oversight system and administrative correction mechanisms. These commenters stated that the Department must establish a complete, centrally focused and harmonized information correction system.

Response: Pursuant to public request, the Department extended for 30 days the period for public comments on its draft guidelines. While the Department would like to gather additional public input, further extension of the public

comment period, or a further round of comments, is not possible due to the statute's October 1, 2002, deadline for implementation of the Department's information quality guidelines.

Comment: Some commenters noted that the Department's guidelines lack a centralized focus and commitment to implementation of the new information quality and oversight system and administrative correction mechanisms. These commenters stated that the Department must establish a complete, centrally focused and harmonized information correction system.

Response: As to adopting a single, central information correction system, the Department's guidelines reflect the reality of the broad scope of the Department's mandate, from conducting each decennial census to forecasting the weather. In keeping with the first principle stated by OMB in its own guidance to federal agencies, a one-size-fits-all approach is not effective (67 FR at 8452). Were the Department or some of its component operating units (OUs) to attempt to apply a single centralized standard, it would necessarily be far less specific—and less effective as a performance standard—than the approach taken.

Comment: Several commenters urged the Department to establish a permanent, dedicated area on its Web site where all documents, notices of existing challenges to disseminated data, resolutions of those challenges, uncorrected information found wanting, and other items related to guidelines can be disseminated.

Response: The Department and its OUs will publish the information quality guidelines as well as other appropriate information on their respective Web sites for public use.

Comment: Some of the commenters pointed out that the guidelines fail to require that the dissemination of the corrected data will be accomplished in a manner equal to the dissemination of and proportional to the significance and importance of the original data.

Response: The form of corrective action will be determined by the nature and timeliness of the information involved and such factors as the significance of the error on the use of the information and the magnitude of the error.

Comment: Some commenters suggested that the Department's guidelines have not proposed complete, functional, and responsible administrative review mechanisms that will afford affected parties meaningful opportunity to ensure data quality and obtain timely correction of flawed information.

Response: OMB notes that under its guidelines "agencies need only ensure that their own guidelines are consistent with * * * OMB guidelines, and then ensure that their administrative mechanisms satisfy the standards and procedural requirements in the new agency guidelines." (67 FR at 8453). In keeping with this directive, the administrative review mechanisms adopted by the Department's OUs are designed to ensure a fair opportunity to seek and obtain correction of information that does not comply with applicable guidelines.

Comment: Some commenters urged a clear statement in the guidelines that these mechanisms are available for challenges based on alleged non-conformance with the OMB or the Department's guidelines.

Response: Administrative mechanisms are provided for appropriate challenges based on all applicable guidelines.

Comment: One commenter urged the Department to make every effort to clearly assert that the guidelines are not judicially reviewable and that the Department is not legally bound by the guidelines and has the right to depart from them when appropriate.

Response: The Department takes the mandate of Section 515 seriously and has published information quality guidelines and standards designed to ensure and maximize the quality of information that it disseminates and will comply with those guidelines and standards. The Department notes that the guidelines are not intended to provide any right to judicial review.

Comment: One commenter suggested that the Department state that public access to information is a central government responsibility that the agency will uphold and that the guidelines should not impose unnecessary administrative burdens that would inhibit agencies from continuing to disseminate information that can be of great benefit and value to the public. The commenter suggested that the Department should look to Section 515 itself to determine the scope and components that are required to be in the guidelines. This commenter also stated that Section 515 should be reviewed as a clarification of the Paperwork Reduction Act (PRA) and that the Department should state that "quality" is only one factor to consider. The commenter stated that the agency must answer to its core substantive mission, operate within budgetary constraints, and consider the benefits of timely dissemination.

Response: The Department agrees that public access to information is a central

government responsibility and intends to apply its information quality guidelines in ways conducive to wide dissemination of information that is of benefit and value to the public. The Department agrees that nothing in Section 515 is intended to diminish or interfere with the Department's core substantive mission and activities, or its ability to operate within budgetary constraints to timely disseminate beneficial information to the public.

Comment: One commenter urged the Department to provide appropriate policy direction to its operating units regarding the data quality standards and pre-dissemination review procedures to ensure that the OMB information quality standards will be met.

Response: Such policy direction has been an integral part of the Department's implementation of OMB's guidelines.

Comment: Some commenters noted that the Department should provide effective procedures for the timely correction of information determined to be flawed and for appropriate prohibitions on further use and dissemination of such information until it is corrected.

Response: In keeping with OMB's directive, the administrative review mechanisms adopted by the Department's OUs are designed to ensure a fair opportunity to seek and obtain correction of information that does not comply with applicable guidelines. In any given instance, the form of corrective action will be determined by the nature and timeliness of the information involved and factors including, but not limited to, the significance of the error on the use of the information and the magnitude of the error.

Comment: Some commenters noted that the Department should revise its draft guidelines to address the open issues, eliminate (or carefully circumscribe and narrow) the proposed exemptions and limitations, and set forth a complete, centrally focused data correction scheme for the Department that implements new information quality and oversight systems and the full administrative correction mechanisms contemplated by Congress and OMB. The commenters stated that the changes should include the specific measures recommended herein.

Response: The OMB guidelines clearly state that agencies should incorporate the standards and procedures required by OMB's "guidelines into their existing information resources management and administrative practices rather than create new and potentially duplicative

or contradictory processes.” (67 FR at 8453)

Scope

Comment: Several commenters stated that the Department should revise the “Scope” sentence to read: “These guidelines cover information disseminated (as defined in the OMB Guidelines) by the Department on or after October 1, 2002, regardless of when the information was first disseminated.”

Response: The Department has clarified that it is the pre-dissemination review procedures that will apply only to information first disseminated on or after October 1, 2002. The Scope section now clearly states that the pre-dissemination review requirement applies to information that the agency first disseminates on or after October 1, 2002, and that the administrative correction mechanisms apply to information that the agency disseminates on or after October 1, 2002, regardless of when the agency first disseminated the information. This language is consistent with OMB’s guidance to federal agencies.

Information Not Covered by the Department’s Guidelines

Comment: Some commenters expressed concerns about the Department’s exemption of certain information from the guidelines. Some of these commenters suggested that the exemptions be “eliminated or narrowly circumscribed” to prevent undermining the mandate of the Act. One commenter objected to OMB’s creation of exemptions not authorized by Section 515 and the inconsistency between OMB’s “dissemination” exemptions in its Section 515 guidelines with OMB’s broader definition of “dissemination” in implementing the PRA. This commenter also objected to additional exemptions proposed by federal agencies. One commenter noted that OMB exempts some types and categories of information from the guidelines and argues that neither OMB nor the agencies has legal authority to exempt “any information that an agency has in fact made public.” This commenter further objected to agency inclusion of OMB exemptions and to any agency interpretations, changes, or exemptions that differ from OMB’s.

Response: The Department is implementing the guidance (guidelines and June 10 supplemental information) developed by OMB. Comments raising concerns with the OMB guidelines are outside the scope of the Department’s actions. The Department has clarified that the exemption for press releases

only applies to press releases themselves and not to any background information on which the press release is based. The Department and its OUs did not create exemptions in addition to those outlined by OMB.

Comment: Two commenters noted that Section 515 lists no exceptions to information disseminated by an agency and, therefore, the Department should not attempt to restrict coverage by narrowing the classifications of information covered. The commenters believe that all information disseminated by the Department should be covered by the guidelines, including information “initiated or sponsored” by the Department and third party information that the Department disseminates in a manner that reasonably suggests that the agency agrees with the information. The commenters suggested that the Department should include “information contained in rulemaking dockets” among the classes of information covered.

Response: The Department notes that the information not covered by the guidelines includes information that is not “disseminated” to the public by the Department (such as intra- or inter-agency information or responses to requests through FOIA, the Privacy Act, *etc.*) and information that is already public (such as press releases, public filings, *etc.*). The Department also points out that all “information” “disseminated”—as those terms are defined by OMB—by the Department is covered by these guidelines, including third party information. In addition, OMB exempted some types and categories of information within the statutory directive to “provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information.” The Department has no control over the quality of information submitted to the agency during a rulemaking. However, any such information on which the Department might rely would be subject to the guidelines’ provisions on third party information.

Comment: Several commenters suggested that these exemptions, especially, but not limited to, those covering adjudicatory proceedings and notice and comment-type proposed action, may undermine the mandate of Section 515. The commenters suggested that information dissemination as part of a proposed rule or proposed NRDAR plan not be excluded from the application of the guidelines. However, another commenter stated that the rulemaking process affords adequate

procedures and opportunities for questioning and correcting information and that data disseminated from a rulemaking process should not be eligible for dispute under the information quality administrative mechanism.

Response: Regarding the commenters’ suggestion that the Department include adjudicatory proceedings within the coverage of the guidelines, the Department notes that in the preamble to the OMB guidelines, OMB stated:

There are well-established procedural safeguards and rights to address the quality of adjudicatory decisions and to provide persons with an opportunity to contest decisions. These guidelines do not impose any additional requirements on agencies during adjudicative proceedings and do not provide parties to such adjudicative proceedings any additional rights of challenge or appeal (67 FR at 8454).

The Department agrees with this reasoning and has, therefore, retained the exemption for adjudicatory processes.

The Department’s guidelines, including those of all the OUs, do not exempt information included in a rulemaking. However, the guidelines maintain the integrity of the rulemaking process by addressing requests for correction in a way that does not disrupt that process. This is in keeping with OMB’s frequent reiteration, in its guidance, that disruption of existing processes is neither contemplated nor desired.

Further, the Department notes that the commenters may have misunderstood the language in its draft guidelines concerning such actions. Informal and formal rulemakings and Natural Resource Damage Assessment and Restoration Plans (NRDAR Plans) are subject to these guidelines. As such, the information quality standards remain applicable to information disseminated as part of a proposed rule or a proposed Natural Resource Plan.

Comment: Some commenters stated that there are no “case-by-case” exemptions from applicability of the guidelines and states that “Congress clearly intended OMB’s Data Quality guidelines to apply to all information that agencies subject to the PRA in fact make public.” The commenters’ examples suggest that, with regard to the meaning of “information,” the reach of Section 515 is identical to that of the PRA. The commenters complain that agency proposals “exempt material relating or [sic] adjudicatory proceedings or processes, including briefs and other information submitted to courts.” The commenters state that

neither OMB nor any federal agency has authority to make this exemption.

Response: This exemption was listed specifically by OMB in its own information quality guidelines to federal agencies, and the Department believes it is appropriate and in keeping with long-established principles of adjudicative processes, which have many inherent safeguards.

Standards and Pre-dissemination Review: Influential Information and Objectivity

Comment: Two commenters pointed out that the Department failed to provide any guidance on how influential scientific or technical information will be subjected to the required higher standards for quality and greater transparency. These commenters stated that the high level of generality provides insufficient guidance to NOAA's Fisheries Service, whose technical fishery conservation and management data is used to regulate fisheries. Some other commenters stated that the Department failed to address appropriate standards of objectivity for influential information.

Response: The Department has revised the guidelines to provide clearer guidance on quality standards for influential information and objectivity. The Department recognizes the importance of influential information that may be used in decisions such as fishery conservation and management. NOAA has revised its guidelines to discuss meeting the objectivity standard for influential information.

Comment: One commenter stated that the Department should narrowly define "influential" information, employing a high threshold for coverage to maximize its flexibility and preserve its ability to act in a timely fashion.

Response: The Department recognizes that a balancing process is involved in defining "influential" information. In keeping with OMB's directive that each agency "define 'influential' in ways appropriate for it given the nature and multiplicity of issues for which the agency is responsible" (67 FR at 8460), the Department's OUs have defined "influential" in ways appropriate to their specific missions and activities, with the goal of ensuring and maximizing information quality.

Comment: Some commenters suggested that the Department should abandon its proposed "objectivity" standard and instead should adopt the "objectivity" standard established by OMB for non-scientific, non-financial and non-statistical information. These commenters stated that the Department

should also direct its operating units to do the same.

Response: As the Department has noted above, OMB has stressed that its guidelines are intended to be flexible and that a one-size-fits-all approach has not been taken, and that it has deliberately allowed agencies to tailor their guidelines to their mission and activities.

Comment: Two commenters stated that the Department should define the categories of information that are "influential" scientific, financial, and statistical information and include within those categories all information disseminated in connection with NRDAR Plans. Two commenters objected to the fact that some agencies neither adopted OMB's definition of "influential" nor provided one of their own.

Response: The Department does not believe it is appropriate to list prospectively all information that may be "influential." Rather, the OUs have defined the term "influential," either by adopting or adapting OMB's definition of that term, and will characterize specific information as such when appropriate. Certain information, such as the gross domestic product, can readily be predicted to consistently meet BEA's definition. However, NRDAR Plans would not typically meet the "influential" threshold established by NOAA. Such Plans deal with site-specific liabilities of one or several persons responsible for unlawful releases of hazardous substances or oil. As such, NRDAR Plans are not expected to have a genuinely clear and substantial impact on major public policy and private sector decisions.

Comment: One commenter suggested that the Department should not unduly limit the concept of "quality" information by narrow definitions of the terms "objectivity, utility, and integrity." This commenter suggested that the Department should begin the description of objectivity by pointing out that the term "objectivity" includes both the substance of information and its presentation.

Response: The Department has revised the definitions of objectivity, utility, and integrity, to incorporate the suggestion concerning both the substance and presentation of information.

Comment: Some commenters objected to the use of policy-driven or mission-driven assumptions or factors by agencies in connection with risk assessments. These commenters stated that only numerical information or factors can be considered in risk assessments and that risk management

policy decisions should be clearly separated from the presentation of scientific data and analysis.

Response: The Department believes that an agency's (or operating unit's) activities and decisions must be consistent with and based upon its statutory mandate. Nothing in Section 515 or in the OMB guidelines repeals or amends the specific statutes governing agency action. Consistent with these statutes, the guidelines of all the Department's OUs require an absence of bias in both the presentation and substance elements of objectivity. In addition, the Department and all of its OUs are committed to transparency about how analytic results are generated, in terms of the specific data used, the various assumptions employed, the specific analytic methods applied, and the statistical procedures employed, consistent with other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections.

Comment: Several commenters pointed out that NOAA completely failed to either adopt or adapt the quality principles of the Safe Drinking Water Act (SDWA) for risk assessment. Two commenters stated that federal agencies must adopt (not adapt) both the SDWA science quality and risk assessment standards unless they conflict with other federal statutory requirements. Two of the commenters suggested that NOAA should adopt the SDWA standards, including a commitment to apply best available science for all influential scientific information it disseminates, including information disseminated in connection with NRDAR plans. These commenters stated that NOAA should specifically adopt the SDWA statutory risk criteria for health assessments and apply them to NRDAR plans.

Response: Although Section 515 does not mention either risk assessments or the Safe Drinking Water Act, the OMB guidelines clearly direct agencies to adopt or adapt the risk principles of the SDWA. Specifically, the OMB guidelines state that "[w]ith regard to analysis of risks to human health, safety and the environment maintained or disseminated by the agencies, agencies shall either adopt or adapt the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996." NOAA's guidelines meet this requirement. NOAA has included in its guidelines a separate section discussing specifically the SDWA criteria for risk assessments. This discussion explains the adaptation of the SDWA criteria for "influential"

information that constitutes assessment of risk to human health, safety, or the environment.

As to the suggestion by some commenters that the SDWA criteria apply to NRDAR Plans, the Department points out that NRDAR Plans are based upon existing statutory, regulatory, and other guidance that may not be completely compatible with the SDWA criteria. A natural resource damage assessment (NRDA) addresses the adverse impacts of past unlawful releases of hazardous substances or oil to determine the liability of the person(s) responsible for those unlawful releases. This liability is measured by the cost of actions to restore the natural resources injured by the releases. Each NRDA is highly fact, site, and party-specific. The impact of an NRDA on one or a few persons' liability for past actions does not constitute the forward-looking impact intended to be included in the category of influential information or SDWA risk assessment. NRDA's are not risk assessments as that term is used in the SDWA or the OMB guidelines. The action to be taken as a result of a NRDA is mandated by law and designed to return the environment to the condition it would have been had the release not occurred. Thus, NRDA's are not analyses of the possible effects on the environment of taking or not taking some future action as are SDWA risk assessments.

Comment: Two commenters urged NOAA to consider quality information as that which is "excellent, complete, up-to-date, and accurate." These commenters stated that NOAA should adopt and expand upon the standards set forth in the SDWA, with more specific guidance regarding all data, especially "original data." The commenters suggested these additional factors include:

- (1) Whether the most accurate methods were used to collect information;
- (2) Whether data measurement methodologies were validated;
- (3) Whether quality assurance/quality control techniques were applied;
- (4) Whether methods used produce data relevant to study hypotheses;
- (5) Whether any experimental conditions were carefully controlled;
- (6) Whether confounding factors were eliminated or successfully controlled;
- (7) Whether covariates were successfully controlled;
- (8) Whether the degree and source of measurement variation were determined;
- (9) Whether the data were collected by those with requisite qualifications;

(10) Whether study materials/populations were representative of conclusions;

(11) Whether appropriate statistical methodologies were employed; and

(12) Whether weight-of-evidence analysis was applied to the information.

Response: All of the Department's OUs strive to maintain and disseminate information that is excellent, complete, up to date, and accurate and their guidelines are designed to achieve that goal. However, the suggested additional factors, which go beyond those enumerated in the SDWA, are not all appropriate to every review of influential information or to every risk assessment and therefore would not be appropriate as standards. The Department notes that NOAA has added additional criteria concerning risk assessment to its guidelines.

Comment: One commenter felt that OMB went far beyond the congressional mandate to inappropriately ask agencies to adapt or adopt the SDWA risk assessment principles. The commenter stated that Department should state that the type of peer review envisioned by the SDWA is inappropriate for all types of risk analysis and may conflict with underlying statutes.

Response: In keeping with OMB's guidance, the Department has adapted the risk assessment principles of the SDWA.

Standards and Pre-dissemination Review: Robustness

Commenter: One commenter stated that OMB's guidelines require robustness checks for information that the agency cannot disclose, such as Confidential Business Information, but which is material to information that the agency does disseminate. The commenter proposed a standard for such robustness checks. This commenter also stated that OMB's "general standard" for these robustness checks is "that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision" (citing 67 FR at 8452, 8457).

Response: The OMB Guidelines state that:

In situations where public access to data and methods will not occur due to other compelling interests, agencies shall apply especially rigorous robustness checks to analytic results and document what checks were undertaken. Agency guidelines shall, however, in all cases, require a disclosure of the specific data sources that have been used and the specific quantitative methods and assumptions that have been employed. Each agency is authorized to define the type of

robustness checks, and the level of detail for documentation thereof, in ways appropriate for it given the nature and multiplicity of issues for which the agency is responsible.

Where an operating unit of the Department relies on information that cannot be disclosed to support influential information that it disseminates, it performs and discloses robustness checks according to the requirements set by OMB Guidelines and implemented in its own information quality guidelines.

Standards and Pre-dissemination Review: Third Party Data

Comment: Some commenters suggested that information generated by third parties, such as states, municipalities, and private entities, that is relied upon and disseminated by the Department is subject to the requirements of Section 515. The commenters stated that such information is subject to the same data quality standards, pre-dissemination review procedures, and administrative correction mechanisms as information generated by the Department.

Response: The Department has added language specifically dealing with third party information. The Department believes it may use reliable outside information, even though third-party sources such as states, municipalities, and universities are not themselves subject to Section 515. The scientific instrumentalities of such third parties play an appropriate role in providing scientific, financial, or statistical information to federal agencies.

The diverse operating units of the Department use such third-party information in varying ways. When used to develop information products or to form the basis of a decision or policy, this information is then subject to the OUs' guidelines. Thus, for an OU to use third-party information, it must be of known quality, and any limitations, assumptions, collection methods, or uncertainties concerning it must be taken into account.

Comment: Some commenters acknowledged a distinction between information generated outside the Department and not used, relied upon, or endorsed by the Department, but merely made public by the Department, and information generated outside the Department and used, relied upon, or endorsed by the Department. Two of these commenters stated that this was a distinction without a difference and that the guidelines should apply to both types of dissemination. One commenter stated that "the data quality guidelines should clearly state that they only apply to information disseminated from the

agency itself and not when the agency is merely acting as a conduit of information.”

Response: For Section 515 to apply, information must be “disseminated.” By definition, “dissemination” means agency initiated or sponsored distribution of information to the public. OU guidelines apply to information that the OU disseminates. However, dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law. This definition also does not include distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes. When an OU distributes information generated by a third party but in no way claims that information as its own, the OU will inform the public that the information is not subject to the Section 515 or applicable information quality guidelines.

Comment: One commenter discussed Federal agencies’ use of third-party proprietary models, stating: “The OMB guidelines further explain that when public access to models is impossible for “privacy, trade secrets, intellectual property, and other confidentiality protections; an agency ‘shall apply especially rigorous robustness checks to analytic results and documents what checks were undertaken.’” [sic]

Response: The Department agrees that when public access to models used to generate influential scientific, financial, or statistical information is impossible, especially rigorous robustness checks should be applied to analytic results and these checks should be disclosed.

Commenter: One commenter suggested that the Department prohibit use of third-party proprietary models that are barriers to public access to data in the guidelines, although the commenter did not cite a specific model.

Response: Without a specific indication of practices by the Department (or its OUs) using third-party models that the commenter finds objectionable, it is not possible to prepare a specific response. However, the Department strives for openness and transparency in all its scientific, financial, and statistical activities, consistent with applicable privacy, trade secrets, intellectual property, and other confidentiality protections.

Comment: Some commenters noted that the Department should develop provisions for new, and modify existing, contracts, cooperative agreements, and grants that require Department partners to furnish information that complies with the OMB and Department guidelines. The commenters also stated that these new provisions should prohibit use by these parties, in fulfilling their contractual, cooperative, or grant agreement obligations with the Department, of information that is not in compliance with the OMB and Department guidelines.

Response: The Department will consider any necessary modification of new and existing contracts, cooperative agreements, and grants with regard to the quality of information presented to the Department through these vehicles. However, such documents already contain provisions requiring work products to be of appropriately high quality.

National Assessment on Climate Change (NACC)

Comment: One commenter argued that, to the extent that the Department or NOAA refers or links to, or otherwise disseminates the first NACC, it is in violation of Section 515. The commenter further claimed that continuing to disseminate the NACC is unacceptable under the Act. The commenter continued with a lengthy, detailed condemnation of the NACC, produced by the U.S. Global Change Research Project (USGCRP).

Response: Although NOAA is one of many agencies that are partners in the USGCRP (<http://www.usgcrp.gov/usgcrp/usagency.html>), NOAA’s activities in that capacity are the very sorts of activities that its mission requires. Any information that NOAA disseminates in connection with those activities, including any future contributions by NOAA to any collective product such as the NACC, will be in full compliance with NOAA’s Information Quality Guidelines, when they become effective. However, any request for correction of the NACC itself should be addressed to the agency that created such information.

Standards and Pre-Dissemination Review: Peer Review

Comment: One commenter asked what the standard is for rebutting the presumption of objectivity resulting from formal, independent, external peer review. Another commenter questioned whether the presumption of validity will apply if the agency does not comply with peer review criticism, views, or recommendations.

Response: Consistent with OMB’s guidelines (67 FR at 8452, 8454), the Department’s guidelines make clear that the presumption of objectivity resulting from formal, independent, external peer review is rebuttable and that the requester has the burden of rebutting the presumption that information subjected to formal, independent, external peer review is objective.

Comment: One commenter suggested that the Department should state that “influential” information will not be subject to new formal, external, independent peer review to meet the “objectivity” standard. The commenter noted that, where peer review is employed, the Department should commit to using appropriately balanced peer review panels and avoid conflicts of interest.

Response: Formal, independent, external peer review is sometimes available and is sometimes used, depending on the specific information and program involved. But other means are also used to ensure objectivity, according to the specific applicable information quality standards. Where peer review is used, the Department attempts to appropriately balance panels and to avoid conflicts of interest, while at the same time ensuring that reviewers have sufficient knowledge of the subject to provide meaningful review.

Melding of Processes

Comment: One commenter disagreed with the Department’s position that “[r]equests to correct information contained within a Natural Resource Plan must be made during the public comment period provided when it is posted for comment.” This commenter stated that Natural Resource Plans can be highly technical, and it is not always apparent whether they contain flawed information or conclusions at the time they are first disseminated. This same commenter stated that the provision in the draft guidelines stating that a comment or petition filed after a comment period has closed, “may be considered, at the discretion of the agency * * * as a late comment.” The commenter argued that Section 515 conveys independent rights granted to the public and neither Section 515 nor OMB’s guidelines contain any such restrictions in instances where other notice and comment opportunities are available.

Response: The Department notes that, although Section 515 may not speak to requests for correction filed during a public comment period, OMB’s guidance to the agencies does state that it is reasonable to meld the Section 515 correction process with a notice and

comment process; therefore creating several procedures where an existing process will achieve the same purpose is unnecessary. Also, it is imperative that the operating unit drafting a rule or Natural Resource Plan be aware of and take into account any demonstration of incorrect information. Therefore, the guidelines continue to meld the Section 515 process into existing public input processes where appropriate. In addition, in some cases, public comment periods are required and shaped by existing statutes or regulations.

Comment: Some commenters believe that the draft guidelines excluded requests for information correction if they pertain to information disseminated as part of a proposed rule or a Natural Resource Plan, which is inconsistent with the objectives and terms of Section 515 and with the OMB directive providing affected parties the unfettered right to "timely" correction of flawed information. The commenters noted that this approach also fails to address or redress the injury affected persons may suffer outside the context of a specific rulemaking or Natural Resource Plan during the pendency of long rulemaking or Natural Resource Plan processes. The commenters noted that rulemakings, as well as natural resource damage assessments and restoration decisions and plans, may take years to complete, during which time discrete, easily resolved and/or important data correction requests may languish without response, all the while adversely affecting the general public and/or the requester who is entitled to a timely response under Section 515. The commenters stated that the Department's guidelines should provide that discrete requests for objective information correction are to be resolved in a timely fashion using the focused procedures of the guidelines, rather than the unwieldy and daunting vehicle of a rulemaking or some other extended decisionmaking process involving the opportunity for notice and comment.

Response: As explained earlier, the Department has not excluded from the administrative correction mechanism information disseminated as part of a proposed rule or a Natural Resource Plan. The Department notes that the responsible office may choose to provide a response prior to the completion of a rulemaking or Natural Resource Plan, if doing so is appropriate and will not delay the issuance of the final action in the matter, particularly if the complainant can demonstrate actual harm from the information or demonstrate substantial uncertainty as

to whether the proposed rule or Natural Resource Plan will take an unusual length of time for final issuance.

Administrative Correction Mechanism

Comment: Some commenters stated that the information correction mechanisms fail to meet the spirit, purpose, and objectives of Section 515 and the OMB guidelines.

Response: The Department has made numerous changes in the administrative mechanism in response to these comments. The Department does not intend to discourage requests for correction or erect procedural barriers that could block legitimate complaints. It is in the best interest of the Department and the public to timely correct information that does not comply with its guidelines.

Savings Clause

Comment: Some commenters urged the elimination of the "savings clause" intended to exempt from coverage certain unidentified information challenges where unspecified "different procedures" for correction may exist.

Response: The Department has deleted the "savings clause" from its guidelines.

Affected Person

Comment: Several commenters suggested that the Department provide a broader definition of "affected persons" who can invoke these mechanisms, consistent with Congressional intent in Section 515 and similar to the proposals of several federal agencies. These commenters stated that the guidelines should also include procedures to enhance notification of and participation by affected parties.

Some commenters argued that the Department and its operating units definition of "affected person" resembles judicial requirement for "standing," which neither Section 515 nor OMB's guidelines require. The commenters urged the Department to adopt a definition of "affected person" that includes "anyone who uses the information, benefits from it, or is harmed by it," as well as trade associations and other groups who represent such persons.

Response: The Department never intended to limit the class of affected persons. However, the Department has revised the definition of "affected person" to describe more clearly a broad class of affected persons. Further, the revised definition is broad enough to include trade associations and others who are related to or associated with persons who may be affected.

Responsible Office

Comment: Some commenters recommended that the Department designate which office within an operating unit would qualify as the responsible office that may decide initial information correction requests. Several commenters stated that the Department should create an independent, dedicated appeal board outside the program office within which the "responsible office" resides to ensure uniform, objective, and timely resolution of appeals of information correction request denials.

Response: The Department's operating units have taken varying approaches to designating the responsible office, in each case using a method that best fits their mission and activities. This is in keeping with OMB's guidance, which has provided flexibility so that "each agency will be able to incorporate the requirements of these OMB guidelines into the agency's own information resource management and administrative practices." (67 FR at 8452). Also, as the Department has noted above, OMB encouraged agencies to incorporate the standards and procedures required by its guidelines into their existing information resources management and administrative practices rather than create new and potentially duplicative or contradictory processes.

Comment: One commenter complained that some agencies do not provide any indication as to the official responsible for deciding the disposition of requests for correction.

Response: The operating units of the Department do provide this information.

Appeal Official

Comment: One commenter suggested that allowing the "Appeal Official" to be only one administrative level above the official who made the initial decision is not sufficiently removed from the office that issued the contested information to ensure sufficient objectivity. The commenter noted that appeals should be made to a centralized Department-wide official, such as the Department's Chief Information Officer or the Section 515 officer. The commenter also stated that the guidelines should clearly state that the appeals officer should act in an "ombudsman" capacity, to objectively assess information complaints and not endeavor to uphold the agency's stated position.

Response: In all cases, the Department's intent is for the review to be objective. The Appeal Official must be sufficiently removed to make a fair

and objective review but at the same time needs to have enough expertise to understand the issues. This involves a balance that different operating units have met in different ways. However, in no case is the appeal official in the same office as the one that decided the initial complaint.

Comment: Some commenters asked for assurances that the heads of responsible offices and appeal officials will be provided sufficient resources to allow for meaningful initial information correction requests and appeals of denials of such within the presumptive 60-day time limit.

Response: The Department has designed its administrative mechanisms to achieve timely response to requests for correction within available resources.

Time Limits for Filing Requests

Comment: One commenter stated that the Department should “establish a timeliness requirement for requests after which an agency has the option to reject a request (e.g., a data quality complaint must be made within three month’s of the information’s release).”

Response: Since the information quality guidelines apply to information disseminated by the Department “on or after October 1, 2002, regardless of when the information was first disseminated * * *”, the Department cannot limit requests for correction of information based on a specific dissemination date. Moreover, the Department believes that it is often difficult to define a specific date of dissemination of information from which to establish a timeliness requirement for a request for correction.

Comment: One commenter suggested that the Department clearly state that the burden of proof lies squarely with the requester to demonstrate both that they are an affected party and that the challenged information does not comply with OMB’s guidelines.

Response: The Department and its operating units have added to their information quality guidelines a statement specifying that the burden of proof is on the requester to show both the necessity and type of correction sought and that, where appropriate, the requester has the burden of rebutting the presumption that information subjected to formal, independent, external peer review is objective. Additionally, the definition of “affected” has been changed. “Affected person” as now defined means an individual or entity that uses, benefits from, or is harmed by the disseminated information at issue. Any initial request for correction must

include an explanation of how the requester is affected.

Timely Review

Comment: Some commenters addressed the issue of setting appropriate, specific time limits for agency decisions on information correction requests. Two of these commenters proposed language that provide agencies with flexibility for requests that may require a longer time frame for response without allowing open-ended delays for making decisions. Two commenters asked that the Department assure that proper and strict limits be imposed on the ability of the responsible offices to extend the time period for resolving initial information correction requests beyond the presumptive 60 day limit.

Response: The Department has retained the language in its draft guidelines: “An initial decision will be communicated to the requester, usually within 60 calendar days.”

In order to assist the Department in making a timely response, it has added to its guidelines a list of corrective actions that may be taken in response to a correction request, based on the nature and timeliness of the information involved, as well as factors such as the significance of the error on the use of the information, and the magnitude of the error. Actions contained in that list include: personal contacts via letter or telephone, form letters, press releases, and postings on an appropriate Web site.

Comment: Some commenters suggested that the Department establish effective procedures and schedules for the timely correction of information determined to be flawed and for appropriate prohibitions on further use and dissemination of such information until it is corrected.

Response: The timetable for corrective action depends on many factors, including but not limited to: the magnitude and significance of the error, the timeliness of the information involved, the original form of dissemination, and the nature of the correction. Any schedule for correction is dependent on these and other factors that cannot be determined in advance. According to the Department’s model administrative mechanism, which is used by most of the operating units, the initial decision is a determination of whether the information should be corrected and what, if any, corrective action should be taken, and this decision is communicated to the requester.

Comment: Some commenters stated that the Department’s guidelines set

unreasonable time frames for filing and addressing complaints regarding some data that undercut accuracy requirements. The commenters argued that an affected individual should be allowed to request correction at any time after improper data is disseminated, particularly for a fishery where timely, accurate distribution of data is paramount.

Response: Timeliness is an important factor in the determination of the appropriate response to an information correction request. The Department has addressed this issue in its revised guidelines by adding the list of corrective actions mentioned above, which recognizes timeliness as an important factor in determining a remedy and which includes withdrawal or correction of the information in question as a form of correction where appropriate. The guidelines now contain the statement: “The form of corrective action will be determined by the nature and timeliness of the information involved and such factors as the significance of the error on the use of the information and the magnitude of the error.”

Comment: One commenter believes that agencies must provide a “specific time frame” for decisions on information correction requests.

Response: The Department provides time frames for response to requests for correction of information that it has disseminated. A single specific time limit for decision on requests for correction for all of the Department operating units is not possible because of the diverse missions of the Department’s operating units. However, in all cases the Department will endeavor to respond as soon as reasonably possible, usually within 60 calendar days as stated in the Department’s guidelines.

Initial Requests

Comment: One commenter suggested that the guidelines should explicitly state that the administrative mechanism applies only to corrections of factual information and that the Department will not consider interpretations of data and information, or requests for de-publishing. The commenter stated that to avoid wasteful duplication of effort the Department should limit complaints to information that is not already subject to existing data quality programs and measures (giving the example of rulemaking proceedings), and that complaints for any data quality standard that presents a potential moving target (i.e., “best available evidence”) should be evaluated based on information available at the time of dissemination.

The commenter urged that the Department's response to correction requests should be proportional to the significance and importance of the information in question to establish the necessary flexibility to set aside a request that has been superceded or is otherwise outdated. The commenter also stated that the Department should limit the mechanism to only what is required in Section 515 to avoid any possibility of creating new rights under administrative law. Finally, the commenter noted that the Department needs adequate procedural safeguards to avoid becoming mired down in minor data disputes, bad faith requests, and frivolous, repetitive, or non-timely claims.

Response: Regarding consideration of interpretations of data and information, the Department's information quality guidelines and Section 515 itself are not designed to contemplate interpretations of data and information apart from requests for correction of information that is not in compliance with agency guidelines. Similarly, requests for de-publishing would be considered only in the context of an appropriate request for correction of Department-disseminated information, in which case withdrawal of the affected information would be one of the options considered if the information were found to be incorrect.

Although the Department has not limited complaints to information that is not already subject to existing data quality programs and measures, the Department has designed its administrative mechanisms to take advantage of existing processes that are designed to ensure the quality of information, such as rulemakings. The Department agrees that requests for correction should be evaluated based on the evidence available at the time of dissemination. However, where it is possible, timely, appropriate, and cost-effective to make corrections based on later-acquired evidence that meets the Department's quality standards, the Department will consider correction.

The Department agrees that its response to correction requests should be proportional to the significance and importance of the information in question (among other factors). The Department believes its guidelines provide the necessary flexibility to deal with superceded or outdated requests. The Department notes that its guidelines provide that requests that are duplicative, repetitious, or frivolous may be rejected and that information need not be corrected if the correction would serve no useful purpose.

Comment: One commenter suggested that the Department's rigid requirements

for filing a request for correction serve as an entry barrier against the requestor. The commenter pointed out that no other federal agency has adopted such a rigid approach, which will terminate with prejudice the majority of requests received. The commenter noted that this practice could lead to retaining an acknowledged fact error in Department information by having such high barriers to a substantive examination of the error.

Response: The Department does not intend to place procedural barriers in the way of legitimate requests for correction. Numerous provisions in the Department's administrative correction mechanisms have been modified to make the process easier to use. In addition, provisions have been added allowing defective requests to be amended and resubmitted.

Reconsideration of Requests

Comment: One commenter pointed out that the Department should be aware that Section 515 does not address reconsideration of complaints and that such a requirement is outside the scope of the statutory requirements. Therefore, the commenter stated that the Department's reconsideration process should remain fairly informal and limited in scope, since the review mechanism is to ensure that initial agency review was conducted with due diligence.

Response: Although the statutory language of Section 515 does not address reconsideration or appeals from initial denials of requests for correction, the Department has followed the OMB guidelines and, in keeping with those guidelines has, through its OUs, devised appeal processes "that serve to address the genuine and valid needs of the agency and its constituents without disrupting agency processes." (67 FR at 8458)

Contents of Request

Comment: Several commenters requested that the Department eliminate the requirement of a "proper request." One commenter explained that the problem was that requesters whose requests were determined not to be proper were not given the opportunity to amend the request, thereby creating in effect a form of summary judgment with prejudice.

Response: To investigate a request for correction and respond to the requester, the Department must have appropriate contact information and sufficient information regarding the source of the information disseminated and how the requester believes that information fails to comply with the applicable

information quality standards. This information can only be provided by the requester. Therefore, the Department has retained the requirement of a "proper request" but has added that if a request is determined not to be proper, the requester may amend the request and resubmit it.

Stating a Claim

Comment: Some commenters urged the elimination of the proposed requirement that the responsible office make a preliminary determination, on the basis of the strength of the assertions in the request alone, that the information in question was based on non-conformance with the Department's information quality standards before objectively investigating and analyzing the request.

Response: This provision has been amended to clarify its purpose. The provision was never meant to preclude any request for correction. Rather it was meant to ensure that the Department could determine from the request exactly what the requestor's claim or complaint is. A request that cannot be understood is not possible to address. Along with language clarifying this intent, language has been added stating that a request determined to not state a claim "may be amended and resubmitted * * *"

Comment: One commenter strongly opposed the Department's position that there is no appeal from a decision that a request does not state a claim.

Response: The Department points out that an appeal is not necessary for a decision by the responsible office that a request does not state a claim because the guidelines clearly state that a denied request may be amended and resubmitted for consideration. The elements of a valid claim are listed in the guidelines. A refused claim may be amended to ensure that these elements are included in the resubmission.

Duplicative Requests

Comment: One commenter stated that the Department should state that if a request has been made and responded to, then a new, similar request may be rejected as frivolous or duplicative.

Response: The Department has included a statement that requests that are duplicative, repetitious, or frivolous may be rejected.

Criteria for Corrections

Comment: One commenter questioned whether the Department would always correct information when it agrees (in some sense) with a request for correction. The commenter suggested that agencies should be required to correct information in all cases.

Response: The OMB guidelines provide that agencies are “required to undertake only the degree of correction that they conclude is appropriate for the nature and timeliness of the information involved, and explain such practices in their annual fiscal year reports to OMB.” (67 FR 8453) Further, the OMB guidelines direct agencies to weigh the costs and benefits of higher quality information. The Department’s guidelines are in compliance OMB guidelines.

Substantially the Same and Acceptable Error

Comment: Several commenters objected to the Department’s assertion that it need not correct information that was within an “acceptable degree of imprecision” and information that failed to meet the applicable standards but would have been substantially the same or statistically the same had the applicable standards been met. One of these commenters also objected to the Department’s assertion that it would not correct information the correction of which would serve no useful purpose.

Response: In the course of simplifying the Department’s administrative correction mechanisms, references to the concepts of “acceptable degree of imprecision” and “substantially the same or statistically the same” have been removed from that part of the Department’s guidelines. However, these concepts are fundamental to scientific inquiry and have not been discarded. In fact, the concept of “acceptable degree of imprecision” is inherent in OMB’s view of “reproducibility” and is part of OMB’s (and the Department’s) definition of that term (67 FR 8456, 8457, 8460). Similarly, concepts of acceptable statistical variability are essential to the scientific process. Information that falls within clearly delineated and acceptable statistical ranges is in fact scientifically correct. The Department has retained the assertion that no initial request for correction will be considered under these procedures concerning disseminated information the correction of which would serve no useful purpose, but has explained what is meant by “serve no useful purpose.” Specifically, “[c]orrection of disseminated information would serve no useful purpose with respect to information that is not valid, used, or useful after a stated short period of time” (such as a weather forecast or atomic time). The Department points out that information need not be corrected if the information would have been substantially or statistically the same or if the information is within an

acceptable degree of error, in line with the scientific process.

Budget Constraints

Comment: Several commenters stated that budgetary constraints should not be a basis for failing to correct information determined by the Department to be flawed. Some of these commenters stated that Section 515 gives the public the right to seek and obtain correction of federally disseminated information. One commenter suggested that “this noncorrection of known errors seems to be too smooth a path of evasion by the most interested staff members, against those requesters seeking legitimate redress and whose claim of error is acknowledged to be correct.”

Response: The Department points out that budgetary constraints do not exempt information from any necessary correction. However, the OMB guidelines direct agencies to weigh the costs and benefits of higher quality information. The Department’s intent in including the statement regarding resources unavailable to that official is now more correctly expressed, consistent with OMB’s guidelines, as an examination of costs and benefits of higher quality information.

Department of Commerce and Operating Unit Web Sites

The Web sites that publish the Department of Commerce’s information quality guidelines are noted below. The first site includes this document for the Department of Commerce. The remaining sites document the information quality guidelines for Commerce’s operating units.

<http://www.doc.gov/>
<http://www.osec.doc.gov/cio/oipr/OS%20Revised%20Info%20Qual%20Guidelines.htm>
<http://www.bxa.doc.gov/>
<http://www.esa.doc.gov/>
<http://www.bea.doc.gov/>
<http://www.census.gov/>
<http://www.doc.gov/eda/>
<http://www.ita.doc.gov/>
<http://www.mdba.gov/>
<http://www.noaa.gov/>
<http://www.ntia.doc.gov/>
<http://www.ta.doc.gov/>
<http://www.nist.gov/>
<https://www.ntis.gov/>

Dated: September 30, 2002.

Thomas N. Pyke, Jr.,
 Chief Information Officer.
 [FR Doc. 02–25340 Filed 10–1–02; 3:33 pm]

BILLING CODE 3510–CW–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1250]

Grant of Authority for Subzone Status; Brittany Dyeing and Printing Corporation (Inc.) (Textile Finishing), New Bedford, MA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for “* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Foreign-Trade Zones (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry.

Whereas, the Board’s regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the City of New Bedford, Massachusetts, grantee of Foreign-Trade Zone 28, has made application for authority to establish special-purpose subzones status at the textile finishing plant of Brittany Dyeing and Printing Corporation (Inc.), located in New Bedford, Massachusetts (FTZ Docket 12–2002, filed February 7, 2002).

Whereas, notice inviting the public comment was given in the **Federal Register** (67 FR 7131, February 15, 2002); and,

Whereas, the application seeks FTZ authority for only the following processes: Dyeing, printing, shrinking, sanferizing, desizing, sponging, bleaching, cleaning/laundry, calendaring, hydroxylating, decatizing, fulling, mercerizing, chintzing, moiring, framing/beaming, stiffening, weighting, crushing, tubing, thermofixing, anti-microbial finishing, shower proofing, flame retardation, and embossing; and,

Whereas, the Board adopts the findings and recommendations of the examiner’s report, and finds that the requirements of the FTZ Act and Board’s regulations would be satisfied, and that approval of the application would be in the public interest if approval were subject to the restriction listed below;

Now, therefore, the Board hereby grants authority for subzone status at the

textile finishing plant of Brittany Dyeing and Printing Corporation (Inc.), located in New Bedford, Massachusetts (Subzone 28E), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and further subject to the following restrictions:

1. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign status fabric admitted to the subzone;

2. No activity under FTZ procedures shall be permitted and that would result in a change in textile quota category or country of origin, and/or alter applicable U.S. quota/visa requirements; and,

3. All FTZ activity shall be subject to § 146.63(d) of the U.S. Customs Service regulations (19 CFR part 146).

Signed at Washington, DC, this 30th day of September 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02-25629 Filed 10-7-02; 8:45 am]

BILLING CODE 3510-05-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1248]

Grant of Authority for Subzone Status; Reebok International, Ltd. (Footwear); Lancaster, Stoughton and Norwood, MA

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Massachusetts Port Authority, grantee of Foreign-Trade Zone 27, has made application to the Board for authority to establish special-purpose subzone at the footwear warehousing and distribution facilities

of Reebok International, Ltd., located in Lancaster, Stoughton and Norwood, Massachusetts (FTZ Docket 13-2002, filed 2/7/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 7131, 2/15/02); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the footwear distribution facilities of Reebok International, Ltd., located in Lancaster, Stoughton and Norwood, Massachusetts (Subzone 27M), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 30th day of September 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02-25627 Filed 10-7-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 38-2002]

Foreign-Trade Zone 40—Cleveland, Ohio, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, requesting authority to expand its zone (Site 3) in the Cleveland, Ohio, area, within the Cleveland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 26, 2002.

FTZ 40 was approved on September 29, 1978 (Board Order 135, 43 FR 46886, 10/11/78) and expanded in June 1982 (Board Order 194, 47 FR 27579, 6/25/82); April 1992 (Board Order 574, 57 FR 13694, 4/17/92); February 1997 (Board Order 870, 62 FR 7750, 2/20/97; June 1999 (Board Order 1040, 64 FR 33242, 6/22/99) and April 2002 (Board Order 1224, 67 FR 20087, 4/15/02). The

general-purpose zone project currently consists of the following sites in the Cleveland, Ohio, area: *Site 1* (94 acres)—Port of Cleveland complex on Lake Erie at the mouth of the Cuyahoga River, Cleveland; *Site 2* (175 acres)—the IX Center (formerly the "Cleveland Tank Plant"), in Brook Park, adjacent to the Cleveland Hopkins International Airport; *Site 3* (1,900 acres)—Cleveland Hopkins International Airport complex; *Site 4* (450 acres)—Burke Lakefront Airport, 1501 North Marginal Road, Cleveland; *Site 5* (298 acres)—Emerald Valley Business Park, Cochran Road and Beaver Meadow Parkway, Glenwillow; *Site 6* (30 acres)—Collinwood site, South Waterloo (South Marginal) Road and East 152nd Street, Cleveland; *Site 7* (47 acres)—Water Tower Industrial Park, Coit Road and East 140th Street, Cleveland; *Site 8* (83 acres)—Strongsville Industrial Park, Royalton Road (State Route 82), Strongsville; *Site 9* (13 acres)—East 40th Street between Kelley & Perkins Avenues (3830 Kelley Avenue), Cleveland; and, *Site 10* (15 acres)—Frane Industrial Park, Forman Road, Ashtabula.

The applicant is now requesting authority to expand existing Site 3 by adding the 42-acre Snow Road Industrial Park, 18901 Snow Road, Brook Park. The site is contiguous to the Cleveland Hopkins International Airport complex (Site 3). The facility was the former tire warehousing and distribution facility of Goodyear Corporation, and it is now owned by the Crow Holdings Industrial Trust which is redeveloping the site as an industrial complex. The site will provide public warehousing and distribution services to area businesses. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099-14th Street, NW., Washington, DC 20005.

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB-

Suite 4100W, 1401 Constitution Avenue, NW, Washington, DC 20230.

The closing period for their receipt is December 9, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 23, 2002).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 600 Superior Avenue East, Suite 700, Cleveland, OH 44114.

Dated: September 26, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02-25630 Filed 10-7-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1247]

Approval for Expansion of Manufacturing Authority Within Subzone 61G; IPR Pharmaceuticals, Inc., Plant (Pharmaceuticals), Carolina, Puerto Rico

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, IPR Pharmaceuticals, Inc. (IPR), operator of SZ 61G, has requested authority to expand the scope of manufacturing activity under zone procedures within Subzone 61G at the IPR plant in Carolina, Puerto Rico (FTZ Docket 5-2002, filed January 17, 2002);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 3685, January 25, 2002);

Whereas, pursuant to Section 400.32(b)(1) of the FTZ Board regulations (15 CFR part 400), the Secretary of Commerce's delegate on the FTZ Board has the authority to act for the Board in making decisions regarding manufacturing activity within existing zones when the proposed activity is the same, in terms of products involved, to activity recently approved by the Board and similar in circumstances (15 CFR 400.32(b)(1)(i)); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand the scope of authority under zone procedures within Subzone 61G on behalf of IPR Pharmaceuticals, Inc., is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 20th day of September 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02-25631 Filed 10-7-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1249]

Expansion of Foreign-Trade Zone 78, Nashville, Tennessee, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Metropolitan Government of Nashville and Davidson County, grantee of Foreign-Trade Zone 78, submitted an application to the Board for authority to expand FTZ 78-Site 7 to include an additional parcel (42 acres; includes temporary site) within the Eastgate Business Park in Lebanon, Tennessee, adjacent to the Nashville Customs port of entry (FTZ Docket 15-2002; filed February 8, 2002);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 7132, February 15, 2002) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 78-Site 7 is approved, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 30th day of September, 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02-25628 Filed 10-7-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-831]

Certain Stainless Steel Sheet and Strip in Coils From Taiwan: Extension of Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the review of stainless steel sheet and strip in coils from Taiwan. This review covers the period July 1, 2000 through June 30, 2001.

EFFECTIVE DATES: October 8, 2004.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4243.

Applicable Statute

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

Background

On October 1, 2001, the Department published a notice of initiation of this antidumping duty administrative review for the period of July 1, 2000 through June 30, 2001 (66 FR 49924). We published the preliminary results of review on July 9, 2002.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by an additional 60 days. Completion of the final results within the 120-day period is not practicable for the following reasons:

- This review involves certain complex issues which were raised by petitioners after the verification and after the preliminary results of review.
- The review involves a large number of transactions and complex adjustments.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by 30 days until December 6, 2002.

Dated: September 26, 2002.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02-25625 Filed 10-7-02; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, Los Angeles; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02-036. Applicant: University of California, Los Angeles, Los Angeles, CA 90095. Instrument: Low Temperature Scanning Tunneling Microscope System, Model LT-STM 1. Manufacturer: VTS Createc GmbH, Germany. Intended Use: See notice at 67 FR 55197, August 28, 2002.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) Operation at 10K to 300K using a liquid bath helium cryostat completely surrounded by a 4K

radiation shield, (2) alternate operation with liquid nitrogen and (3) a scanning range of 1 μ m; at 6K and 1.5 μ m at 77K. A university center for microstructural devices advised September 23, 2002 that (1) These capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02-25626 Filed 10-7-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081202A]

New Information Indicates Fine-scaled Stock Structure for Harbor Seals in Alaska

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

ACTION: Notice of information; request for comments; reopening comment period.

SUMMARY: On August 26, 2002, NMFS announced that new information is available that indicates fine-scaled stock structure of harbor seals in Alaska. NMFS invited the public to submit additional information or viewpoints related to harbor seal stock structure in Alaska. In response to a request from the public, NMFS is reopening the comment period for 14 days.

DATES: Comments must be received before close of business on October 22, 2002.

ADDRESSES: Comments should be forwarded to P. Michael Payne, Assistant Regional Administrator for Protected Resources, Alaska Regional Office, NMFS, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, Alaska Regional Office, NMFS, Juneau, Alaska, (907) 586-7824; or Thomas Eagle, Office of Protected Resources, NMFS, Silver Spring, MD, (301) 713-2322, ext. 105.

SUPPLEMENTARY INFORMATION:

Electronic Access

The original notice of availability and a map of the areas in Alaska where seal groupings appear discrete may be found at www.fakr.noaa.gov/protectedresources.

Background

NMFS issued a notice (67 FR 54792, August 26, 2002) that new information indicates that stock structure of harbor seals in Alaska may be more finely scaled than is currently recognized in marine mammal stock assessment reports compiled pursuant to section 117 of the Marine Mammal Protection Act. NMFS also advised in that notice that it is evaluating harbor seal stock structure through a co-management process with the Alaska Native Harbor Seal Commission. NMFS solicited additional information and viewpoints from the public that it should consider throughout the evaluation of harbor seal stock structure.

The Alaska Department of Fish and Game requested that NMFS extend the comment period for 2 weeks. In response to this request, NMFS is reopening the comment period for 2 weeks.

Dated: October 2, 2002.

Chris Mobley,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02-25623 Filed 10-7-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091702B]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of cancellation of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) has cancelled the public meeting of its Monkfish Oversight Committee that was scheduled for Tuesday, October 8, 2002 at 9:30 a.m. at the Holiday Inn By The Bay, 88 Spring Street, Portland, ME 04101.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465-0492.

SUPPLEMENTARY INFORMATION: The initial notice published on September 13, 2002 (67 FR 59492). The meeting will be rescheduled at a later date and announced in the **Federal Register**.

Dated: October 3, 2002.

Richard W. Surdi,

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

[FR Doc. 02-25622 Filed 10-7-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091802A]

Marine Mammals; File No. 1033-1683-00

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Michael A. Castellini, Ph.D., Institute of Marine Science, School of Fisheries and Ocean Sciences, University of Alaska, Fairbanks, AK 99775, has been issued a permit to take Weddell seals (*Leptonychotes weddellii*) and other Antarctic pinnipeds for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376;

FOR FURTHER INFORMATION CONTACT:

Ruth Johnson or Carrie Hubard, (301)713-2289.

SUPPLEMENTARY INFORMATION: On August 5, 2002, notice was published in the **Federal Register** (67 FR 50632) that a request for a scientific research permit to take Weddell seals had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 1033-1683 authorizes the Holder to capture, sample, instrument and release Weddell seals, incidentally harass crabeater seal (*Lobodon carcinophagus*), leopard seal (*Hydrurga leptonyx*), Ross seal (*Ommatophoca*

rossii), southern elephant seal (*Mirounga leonina*), and Antarctic fur seal (*Archctocephalus gazella*), and import blood, feces and milk collected during research.

Dated: September 25, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02-25624 Filed 10-7-02; 8:45 am]

BILLING CODE 3510-22-S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Homeland Security Training and Technical Assistance NOFA Discussion Forum

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service will host a teleconference call to discuss, and answer question regarding, the recent Notice of Availability of Funds for a National Provider of Training and Technical Assistance to Corporation for National and Community Service Programs Using Service and Volunteers to Support Homeland Security, published in the **Federal Register** on September 5, 2002 (67 FR 56809). Please send discussion questions at least 24 hours prior to the call via email to charrison@cns.gov. We will consider all discussion questions. The toll-free number for the call is 888-889-1959. The pass code is HS ONE. Callers will also be required to give the conference leader's name Gina Fulbright-Powell.

DATES: Teleconference call will take place on Thursday, October 10, 2002, 2:30-4 p.m. Eastern.

ADDRESSES: Our address is The Corporation for National and Community Service, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: For further information, contact Gina Fulbright-Powell (202-606-5000, ext. 182), e-mail gfulbrig@cns.gov or Wade Gatling (202-606-5000, ext. 451), e-mail wgatling@cns.gov.

Dated: October 3, 2002.

Gretchen Van der Veer,

Director, Office of Leadership Development and Training.

[FR Doc. 02-25606 Filed 10-7-02; 8:45 am]

BILLING CODE 6050--\$-P

DELAWARE RIVER BASIN COMMISSION

Notice of Proposed Rulemaking; Proposed Amendments to the Comprehensive Plan and Water Code Relating to Operation of Lake Wallenpaupack During Drought Watch, Drought Warning and Drought Conditions

AGENCY: Delaware River Basin Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission will hold a public hearing to receive comments on proposed amendments to the agency's *Comprehensive Plan and Water Code* to incorporate a revised drought operating plan for the Lake Wallenpaupack Reservoir and Hydroelectric Facility, located in Pike County, Pennsylvania in the Lackawaxen Watershed. The reservoir and facility currently are owned and operated by PPL Holtwood, LLC ("PPL"). The proposed rulemaking would increase by 12,500 acre-feet or 4.1 billion gallons the amount of Lake Wallenpaupack water available to the Commission for flow augmentation in the main stem Delaware River during drought watch, drought warning and drought conditions, as defined in Section 2.5.3 of the Water Code and Docket D-77-20 CP (Revision 4), dated April 28, 1999. The minimum lake elevation to be maintained during drought conditions—the target elevation for December 1—would decrease from 1170.0 feet to 1167.5 feet. The right to use as much as 4.1 billion gallons of Lake Wallenpaupack water to augment Delaware River flows during drought would be deemed to satisfy up to 10,000 acre-feet of the Commission's consumptive use replacement requirement for the Martins Creek and Lower Mount Bethel generating facilities and future facilities that PPL (or its successors in interest) might construct. That is, under the proposed drought plan, the Commission would release PPL (and its successors) from the requirement that it provide up to 10,000 acre-feet or 3.3 billion gallons of dedicated storage to replace, gallon for gallon, water consumptively used by the entity's existing and future generating facilities when the basin is in drought watch, drought warning or drought operations.

DATES: The public hearing will be held on Wednesday, October 16, 2002 during the Commission's regular business meeting, which will begin at 1:30 p.m. Persons wishing to testify are asked to register in advance with the Commission Secretary by phoning 609-

883-9500 ext. 203. Written comments will be accepted through Friday, November 15, 2002. *Comments must be received, not merely postmarked, by that date.*

ADDRESSES: The public hearing will be held at the Commission's offices, 25 State Police Drive, West Trenton, NJ. Written comments should be addressed to the Commission Secretary at DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360.

FOR FURTHER INFORMATION CONTACT: Please contact Pamela M. Bush, at 609-883-9500 ext. 203, with questions about the proposed rule change or the rulemaking process.

SUPPLEMENTARY INFORMATION: A draft resolution enacting the proposed amendments to Sections 2.5.5 and 2.5.6 of the *Water Code* and the text of the current *Water Code* (which is incorporated in the *Comprehensive Plan*) may be viewed on the Commission's Web site, at <http://www.drbc.net>.

Dated: October 1, 2002.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 02-25440 Filed 10-7-02; 8:45 am]

BILLING CODE 6360-01-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Regulatory 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 December 9, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory 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: October 2, 2002.

John D. Tressler,

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

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: Trends in International Mathematics and Science Study (TIMSS): 2003.

Frequency: One time.

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

Reporting and Recordkeeping Hour Burden:

Responses: 25,575.

Burden Hours: 20,704.

Abstract: The TIMSS 2003 will assess the mathematical and science knowledge of students in over 50 participating countries. This is the third cycle of TIMSS studies. Previous TIMSS were conducted in 1994-1995 and in 1999. TIMSS 2003 will go to fourth and eighth graders in the United States. In addition to the assessments, in each participating country, the selected students and their 4th grade teachers and 8th grade science and math teachers, and administrators of the selected schools will also fill out background questionnaires to learn about curricula, instruction, home context, and school characteristics and policies.

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 2169. 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 Kathy Axt at her e-mail address Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 02-25482 Filed 10-7-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Regulatory 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 December 9, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory 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: October 2, 2002.

John D. Tressler,

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

Federal Student Aid

Type of Review: Extension.

Title: Guaranty Agency Financial Report.

Frequency: Monthly; Annually.

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

Reporting and Recordkeeping Hour Burden:

Responses: 612.

Burden Hours: 33,660.

Abstract: The Guaranty Agency Financial Report is used to request payments from and make payments to the Department of Education under the Federal Family Education Loan (FFEL) program authorized by Title IV, Part B of the HEA of 1965, as amended. The report is also used to monitor the agency's financial activities, including activities concerning its federal fund, operating fund and the agency's restricted account.

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 2145. 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. 02-25483 Filed 10-7-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 7, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the e-mail address Karen_F_Lee@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory 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.

Dated: October 1, 2002.

John D. Tressler,

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

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: National College Alcohol, Drug and Violence Survey.

Frequency: Annually.

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

Reporting and Recordkeeping Hour Burden:

Responses: 50,000.

Burden Hours: 30,000.

Abstract: The National College Alcohol, Drug and Violence Survey is being conducted as a national probability sample in order for the Department to obtain national statistics on alcohol and other drug use and violence among students at institutions of higher education.

Requests for copies of the submission for OMB review; comment request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2088. 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 vivan.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 Katrina Ingalls at her e-mail address Katrina.Ingalls@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. 02-25481 Filed 10-7-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

[Docket No. EA-137-A]

Application to Amend Electricity Export Authorization; New York State Electric & Gas Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: New York State Electric & Gas Corporation (NYSEG) has submitted an application to amend its authorization to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before November 7, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE-27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350 (FAX 202-287-5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202-586-4708 or Michael Skinker (Program Attorney) 202-586-2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA)(16 U.S.C. 824a(e)).

On April 14, 1997, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized NYSEG to transmit electric energy from the United States to Canada using the international electric transmission facilities owned by Niagara Mohawk Power Corporation and the New York Power Authority.

On September 17, 2002, NYSEG applied to amend its existing export authorization by adding to the list of authorized export points those international transmission facilities owned by Citizens Utilities Company, the Joint Owners of Highgate Project, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by NYSEG, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the NYSEG application to export electric energy to Canada should be clearly marked with Docket EA-137-A. Additional copies are to be filed directly with Mr. John R. Tighe, Manager, Bulk Power Sales, New York State Electric & Gas Corporation, Corporate Drive, Kirkwood Industrial Park, Post Office Box 5224, Binghamton, New York 13902-5224 and Mr. William J. Cronin, Esq., Rosa Pietanza, Esq., Huber Lawrence & Abell, 605 Third Avenue, 27th Flr, New York, New York 10158.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at <http://www.fe.doe.gov>. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Pending Procedures" from the options menus.

Issued in Washington, DC on October 2, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02-25535 Filed 10-7-02; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Idaho Operations Office Notice of Availability of Solicitation for Awards of Financial Assistance

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of Solicitation Number DE-PS07-03ID14434 University Reactor Instrumentation (URI) Program.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, is soliciting applications for special research grant awards that will upgrade and improve U.S. nuclear research and training reactors. It is anticipated that on October 1, 2002, a full text for Solicitation Number DE-PS07-03ID14434 for the 2003 URI Program

will be made available at the Industry Interactive Procurement System (IIPS) Web site at: <http://e-center.doe.gov>. The deadline for receipt of applications will be on December 5, 2002. Applications are to be submitted via the IIPS Website. Directions on how to apply and submit applications are detailed under the solicitation on the Web site.

FOR FURTHER INFORMATION CONTACT: Kathleen Stallman, Contract Specialist at stallmkm@id.doe.gov.

SUPPLEMENTARY INFORMATION: The solicitation will be issued in accordance with 10 CFR part 600.6(b), eligibility for awards under this program will be restricted to U.S. colleges and universities having a duly licensed, operating nuclear research or training reactor because the purpose of the University Reactor Instrumentation (URI) program is to upgrade and improve the U.S. university nuclear research and training reactors and to contribute to strengthening the academic community's nuclear engineering infrastructure.

The statutory authority for this program is Pub. L. 95-91.

Issued in Idaho Falls on September 26, 2002.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 02-25529 Filed 10-7-02; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. No 92-463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, November 7, 2002, 9 a.m.-5 p.m.; Friday, November 8, 2002, 8:30 a.m.-4 p.m.

ADDRESSES: West Coast Hotel, 1101 North Columbia Center Boulevard, Kennewick, WA 99336.

FOR FURTHER INFORMATION CONTACT: Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7-75, Richland, WA, 99352; Phone: (509) 376-6216; Fax: (509) 376-1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Thursday, November 7, 2002

- Tank Waste Program
 - Strategic Initiative 2: Accelerate Tank Waste Treatment Completion by 20 Years
 - Accelerated Tank Retrieval and Closure Issues
 - M-45 Tri-Party Agreement Draft Change Package (Single-Shell Tank Retrieval and the Establishment of Accelerated Waste Retrieval and Closure Demonstration Projects)
- Waste Treatment
 - Supplemental Technologies
 - Potential Enhancements to the Vitrification Plant
 - Challenges: Funding, Technology Development
 - Hanford's Draft Long-Term Stewardship Plan
 - Goals and Outcomes for November Long-Term Stewardship Workshop

Friday, November 8, 2002

- Update on the Draft Hanford Solid (Radioactive and Hazardous) Waste Environmental Impact Statement (EIS)
- Public Involvement Processes (*e.g.* HAB press releases, DOE ads, fact sheets)
- Discussion on FY 03 Hanford Advisory Board Meeting Schedule
- Committee Updates

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be

available by writing to Yvonne Sherman, Department of Energy Richland Operation Office, 825 Jadwin, MSIN A7-75, Richland, WA 99352, or by calling her at (509) 376-1563.

Issued at Washington, DC on October 2, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02-25531 Filed 10-7-02; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Fossil Energy; Methane Hydrate Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Methane Hydrate Advisory Committee. Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, November 13, 2002, 8:30 a.m. to 5 p.m. and Thursday, November 14, 2002, 8:30 a.m. to 3 p.m.

ADDRESSES: Marriott at Metro Center, 775 12th Street NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT:

Edith Allison, U.S. Department of Energy, Office of Natural Gas and Petroleum Technology, Washington, DC 20585. Phone: 202/586-1023.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Methane Hydrate Advisory Committee is to provide advice on potential applications of methane hydrate to the Secretary of Energy; assist in developing recommendations and priorities for the Department of Energy methane hydrate research and development program; and, submit to Congress a report on the anticipated impact on global climate change from methane hydrate formation, methane hydrate degassing and consumption of natural gas produced from methane hydrates.

Tentative Agenda

Wednesday, November 13

- Welcome and Introductions—Mike Smith, Assistant Secretary for Fossil Energy and Arthur Johnson, Advisory Committee Chairman

- Joint meeting with the Interagency Coordinating Committee—8:30 to noon Briefings on Methane Hydrate Accomplishments, Future Activities and R&D Issues by Minerals Management Service; National Oceanic and

Atmospheric Administration; National Science Foundation; Naval Research Laboratory; U.S. Geological Survey; and Department of Energy

- Presentation and discussion—Ocean Drilling Program Leg 204 to Hydrate Ridge

- Presentation and discussion—Mallik Well and other Arctic studies

Ten minutes will be allowed for questions and public comment after each presentation.

- Review of draft report to Congress on Hydrates and Global Climate Change

Thursday, November 14

- Continue review and revision of report to Congress on Hydrates and Global Climate Change

- Discussion of additional recommendations to Department of Energy

- Public comment period
- Adjournment, about 3:00 p.m.

Public Participation: The meeting is open to the public. The Chairmen of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Edith Allison at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Transcripts will be available by request.

Issued in Washington, DC, on October 2, 2002.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 02-25534 Filed 10-7-02; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Fossil Energy

Coal Policy Committee of the National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Coal Policy Committee of the National Coal Council. Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, November 12, 2002, 10 a.m. to 2 p.m.

ADDRESSES: Chicago Hilton, 720 South Michigan Avenue, Chicago, IL.

FOR FURTHER INFORMATION CONTACT: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202/586-3867.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Coal Policy Committee of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues. The purpose of this meeting is to review the Council's document summarizing past Council reports that address energy security and mercury emissions control technology.

Tentative Agenda:

- Call to order by Ms. Georgia Nelson, Chairwoman, Coal Policy Committee.
- Review and discuss the Council's document summarizing past Council reports that address energy security and mercury emissions control technology.
- Discussion of other business properly brought before the Coal Policy Committee.
- Public comment—10 minute rule.
- Adjournment.

Public Participation: The meeting is open to the public. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Margie D. Biggerstaff at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Transcripts: The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 2, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02-25528 Filed 10-7-02; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Umatilla Generating Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to offer contract terms for integrating power from the Umatilla Generating Project into the Federal Columbia River Transmission System. This decision is based on input from public processes and information in the Umatilla Generating Project Environmental Impact Statement (DOE/EIS-0324, January 2002). The Umatilla Generating Project is a 550-megawatt gas-fired, combined-cycle, combustion-turbine power generation project, located near Hermiston, Oregon, which will help meet the short-term need and future demand for energy resources.

ADDRESSES: Copies of the Umatilla Generating Project ROD and the Umatilla Generating Project EIS may be obtained by calling BPA's toll-free document request line: 1-800-622-4520.

FOR FURTHER INFORMATION CONTACT: Inez S. Graetzer, KEC-4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208-3621, telephone number 503-230-3786; fax number 503-230-5699; e-mail isgraetzer@bpa.gov.

Issued in Portland, Oregon, on September 27, 2002.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 02-25530 Filed 10-7-02; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-570-000]

Alliance Pipeline L.P.; Notice of Tariff Filing

October 2, 2002.

Take notice that on September 30, 2002, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 279, to become effective November 1, 2002.

Alliance states that Sheet No. 279 sets forth the available delivery points on its pipeline system. Alliance further states that it has added a delivery point located at Will County, Illinois for the purpose of delivering volumes of natural gas to Guardian Pipeline L.L.C. Alliance is submitting First Revised Sheet No. 279 to reflect the addition of the new delivery point to the list of delivery points available under its FERC Gas Tariff. Alliance states that its filing is made pursuant to the authority of section 4 of the Natural Gas Act, 15 U.S.C. 717c.

Alliance states that copies of its filing have been mailed to all 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) 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02-25566 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-301-055]

ANR Pipeline Company; Notice of Negotiated Rate

October 2, 2002.

Take notice that on September 30, 2002, ANR Pipeline Company, (ANR) tendered for filing two negotiated rate agreements between ANR and Anadarko Energy Service Company pursuant to ANR's Rate Schedules ITS and ITS (Liquefiabiles). ANR tenders these agreements pursuant to its authority to enter into negotiated rate agreements. ANR requests that the Commission accept and approve the agreements to be effective October 1, 2002.

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.

Magalie R. Salas,

Secretary.

[FR Doc. 02-25561 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-568-000]

Black Marlin Pipeline Company; Notice of Tariff Filing

October 2, 2002.

Take notice that on September 30, 2002, Black Marlin Pipeline Company (Black Marlin) tendered for filing in its FERC Gas Tariff First Revised Volume No. 1, the tariff sheets listed on Attachment A to the filing. The tariff sheets are proposed to be effective November 1, 2002.

Black Marlin states that the purpose of the tariff filing is to: (1) Update the information in the tariff regarding whom customers and interested parties can contact; (2) replace references in the tariff to an electronic bulletin board with information regarding Black Marlin's Internet Web site; and (3) incorporate a cash-out mechanism for transportation gas imbalances.

Black Marlin states that copies of the filing are being mailed to affected 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02-25564 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95-408-046]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

October 2, 2002.

Take notice that on September 30, 2002, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of November 1, 2002:

Fifty-ninth Revised Sheet No. 25
Fifty-ninth Revised Sheet No. 26
Fifty-ninth Revised Sheet No. 27
Twenty-sixth Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to Stipulation I, Article I, Section E, True-up Mechanism, of the Settlement (Settlement) in Docket No. RP95-408, *et al.* Columbia notes that, pursuant to the true-up mechanism, Columbia is required to true-up its collections from the Settlement Component for twelve-month periods commencing November 1, 1996. In accordance with the Settlement, the true-up component of the Settlement Component is to be removed effective November 1 of each year. Columbia states that the instant filing is being made to remove such true-up component from the currently effective Settlement Component effective November 1, 2002.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected 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.

Magalie R. Salas,
Secretary.

[FR Doc. 02-25558 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-565-000]

Dominion Transmission, Inc.; Notice of Annual TCRA Filing

October 2, 2002.

Take notice that on September 30, 2002, Dominion Transmission Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with an effective date of November 1, 2002:

Fifteenth Revised Sheet No. 31
Eighteenth Revised Sheet No. 32
Tenth Revised Sheet No. 34
Thirteenth Revised Sheet No. 35
Sixth Revised Sheet No. 39

DTI states that the purpose of this filing is to update DTI's effective Transportation Cost Rate Adjustment (TCRA) through the mechanism described in GT&C Section 15.

DTI states that copies of the filing have been sent to DTI's customers and interested stated 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.

Magalie R. Salas,
Secretary.

[FR Doc. 02-25563 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP02-118-004]

High Island Offshore System, L.L.C.; Notice of Negotiated Rate Filing

October 2, 2002.

Take notice that on September 30, 2002, High Island Offshore System, L.L.C. (HIOS) tendered for filing a Negotiated Rate Arrangement with BP Exploration and Production, Inc. (BP). HIOS requests that the Commission approve the Negotiated Rate Arrangement effective October 1, 2002.

HIOS states that the filed Negotiated Rate Arrangement reflects negotiated rates between HIOS and BP for transportation under Rate Schedule FT-2 beginning October 1, 2002.

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.

Magalie R. Salas,
Secretary.

[FR Doc. 02-25562 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-569-000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2002.

Take notice that on September 30, 2002, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Seventh Revised Sheet No. 4A. The proposed effective date of this revised tariff sheet is November 1, 2002.

Iroquois states that pursuant to Part 154 of the Commission's regulations and Section 12.3 of the General Terms and Conditions of its tariff, it is filing Fourth Revised Sheet No. 4A and supporting workpapers as part of its annual update of its Deferred Asset Surcharge to reflect the annual revenue requirement associated with its Deferred Asset for the amortization period commencing November 1, 2002.

Iroquois states that the revised tariff sheet reflects a decrease of \$.0001 per Dth in Iroquois' effective Deferred Asset Surcharge for Zone 1 of \$.0001 per Dth (from \$.0007 to \$.0006 per Dth), which results in a decrease in the Inter-Zone surcharge of \$.0001 per Dth (from \$.0011 to \$.0010 per Dth).

Iroquois states that copies of its filing were served on all jurisdictional 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02-25565 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-571-000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2002.

Take notice that on September 30, 2002, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to its FERC Gas Tariff, First Revised Volume No. 1, Eighth Revised Sheet No. 4A, with an effective date of November 1, 2002.

Iroquois states that pursuant to Part 154 of the Commission's regulations and Section 12.5 of the General Terms and Conditions of its tariff, it is filing Eighth Revised Sheet No. 4A and supporting workpaper as part of its annual Transportation Cost Rate Adjustment filing to reflect changes in Account No. 858 costs for the twelve month period commencing November 1, 2002.

Iroquois states that copies of its filing were served on all jurisdictional 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02-25567 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-4-002]

Maritimes & Northeast Pipeline L.L.C.; Notice of Compliance Filing

October 1, 2002.

Take notice that on September 26, 2002, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 243, First Rev First Revised Sheet No. 265, and First Rev First Revised Sheet No. 295, to become effective on November 1, 2002.

In compliance, Maritimes proposes to revise its Index Price consistently throughout its tariff to be calculated as the monthly average of the Platts Gas Daily, Midpoint, Tennessee Zone 6 (delivered) price, less the 100% load factor Rate Schedule MN365 maximum recourse rate. The following sections of the General Terms & Conditions of Maritimes' FERC Gas Tariff, First Revised Volume No. 1, have been

revised to reflect this Index Price: (i) Section 11.6(c) (Balancing, Index Price); (ii) Section 20.4 (Fuel Retainage Quantity, True Up); and (iii) Section 8.7 (Curtailement, Compensation).

Maritimes states that copies of this filing were mailed to all affected customers of Maritimes 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-25545 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02-53-000]

Midwest Independent Transmission System Operator, Inc.; Notice of Application

October 2, 2002.

Take notice that on September 24, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue long-term notes or other evidences of indebtedness in an amount not to exceed \$100 million.

Midwest also requests a waiver from the Commission's competitive bidding requirement at 18 CFR 34.2.

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 "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 TTY, (202) 208-1659. 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. The Commission strongly encourages electronic filings.

Comment Date: October 23, 2002.

Magalie R. Salas,
Secretary.

[FR Doc. 02-25553 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-562-000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 1, 2002.

Take notice that on September 25, 2002, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 2002:

Forty-Sixth Revised Sheet No. 5
Forty-Sixth Revised Sheet No. 6
Forty-Third Revised Sheet No. 7
Eighteenth Revised Sheet No. 8

MRT states that the purpose of this filing is to adjust MRT's fuel percentages pursuant to section 22 of its General Terms and Conditions.

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. 02-25550 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-363-004]

North Baja Pipeline, LLC; Notice of Negotiated Rate

October 1, 2002.

Take notice that on September 25, 2002, North Baja Pipeline, LLC (NBP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 6 and Original Sheet No. 8.

NBP states that these sheets are being filed to reflect two negotiated rate agreements in its tariff. NBP requests that these tariff sheets be made effective September 1, 2002.

NBP further states that a copy of this filing has been served on NBP's jurisdictional customers and interested state regulatory agencies.

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. 02-25548 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02-45-000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Tariff and Filing of Non-Conforming Agreement

October 1, 2002.

Take notice that on September 25, 2002, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, Eighth Revised Sheet No. 2, First Revised Sheet No. 492 and Sheet No. 493, proposed to be effective on October 28, 2002.

Northern states that the purpose of this filing is to submit a Master Netting and Setoff Agreement as a non-conforming agreement and to add a tariff sheet listing of non-conforming agreements.

Northern further states that copies of the filing have been mailed to each of 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 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. 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. 02-25542 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-564 -000]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 1, 2002.

Take notice that on September 27, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing revised tariff sheets to reflect modifications necessary to reinstate the rate ceiling for short-term capacity release transactions following the conclusion of FERC's two-year waiver period as provided for in Order No. 637. GTN requests an effective date of October 1, 2002, for these tariff sheets.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

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. 02-25552 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-561-000]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 1, 2002.

Take notice that on September 25, 2002, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Tenth Revised Sheet No. 5, Tenth Revised Sheet No. 6, Eleventh Revised Sheet No. 7, and Second Revised Sheet No. 15, to be effective November 1, 2002.

REGT states that the purpose of this filing is to adjust REGT's fuel percentages and Electric Power Costs (EPC) Tracker pursuant to sections 27 and 28 of its General Terms and Conditions.

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. 02-25549 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02-35-001]

Tennessee Gas Pipeline Company; Notice of Compliance Tariff Filing

October 2, 2002.

Take notice that on September 30, 2002, Tennessee Gas Pipeline Company, (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Ninth Revised Sheet No. 405A, with an effective date of September 16, 2002.

Tennessee states that the revised tariff sheet is being filed in order to comply with the Commission's September 13, 2002 Order in the referenced proceeding, which relates to Tennessee's previous filing to enhance the creditworthiness provisions of its FERC Gas Tariff, and also provides protection to Tennessee and its creditworthy and paying customers from the realistic potential of sudden changes in other customers' financial condition and payment status.

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.

Magalie R. Salas,
Secretary.

[FR Doc. 02-25554 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-312-106]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

October 2, 2002.

Take notice that on September 20, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Calpine Energy Services, L.P. Tennessee requests that the Commission grant such approval effective November 1, 2002.

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.

Magalie R. Salas,
Secretary.

[FR Doc. 02-25559 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-563-000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

October 1, 2002.

Take notice that on September 26, 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, which sheets are enumerated in Appendix A attached to the filing.

Transco states that the purpose of the filing is to track rate and fuel percentage changes attributable to transportation service purchased from Texas Gas Transmission Corporations (Texas Gas) under its Rate Schedule FT, the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT-NT. This filing is being made pursuant to tracking provisions under Section 4 of Transco's Rate Schedule FT-NT.

Transco states that included in Appendix B attached to the filing is the explanation of the rate changes and details regarding the computation of the revised FT-NT rates.

Transco states that copies of the filing are being mailed to affected 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. 02-25551 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-288-027]

Transwestern Pipeline Company; Notice of Negotiated Rate

October 2, 2002.

Take notice that on September 30, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eighteenth Revised Sheet No. 5B.05; Tenth Revised Sheet No. 5B.07; Seventh Revised Sheet No. 5B.08; and Second Revised Sheet No. 5B.12, to become effective October 1, 2002:

Transwestern states that the above sheets are being filed to implement a specific negotiated rate agreement with PNM Gas Services, to reflect a negotiated rate calculation change with Astra Power LLC, and to reflect the permanent capacity release by USGT/ Aguila to BP Energy, in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines. Transwestern states that the above referenced tariff sheets have been revised to reflect the new negotiated rate contract information.

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.

Magalie R. Salas,
Secretary.

[FR Doc. 02-25560 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-241-000]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Penalty Revenue Report

October 1, 2002.

Take notice that on April 30, 2002, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing a report of the amount of penalty revenue collected by Williams pursuant to the provisions of Article 9.6 of the General Terms and Conditions of its FERC Gas Tariff during Periods of Daily Balancing (PODB) occurring in the 1995-96 and 1996-97 winter heating seasons, and the proposed distribution of such penalty revenues.

Williams states that as a result of severe weather conditions and resulting high demand for gas in its major market areas, Williams imposed two PODBs pursuant to Article 9.4 of its tariff during the 1995-96 winter heating season and three PODBs during the

1996-97 winter heating season as further described in its report. Penalties were imposed for overruns of MDTQ and MDWQ, depletion of gas in storage, under receipts at receipt points and over deliveries at delivery points as provided in Article 9.6 of Williams' tariff. As a result, Williams has collected \$869,052 in penalty revenues. Williams proposes to refund these penalty revenues plus accrued interest (\$396,119 through April 30, 2002) to non-offending parties as shown herein.

Williams states that a copy of its filing was served on all jurisdictional 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 on or before October 8, 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. 02-25546 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-241-002]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Penalty Revenue Report

October 1, 2002.

Take notice that on August 6, 2002, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing a second revised page 6 of Schedule 1 to its report of penalty revenue collected during Periods of Daily Balancing (PODB), filed April 30, 2002 in Docket No. RP02-241-000, and the subsequent revised report filed July 23, 2002 in Docket No. RP02-241-001.

Williams states that it made a revised filing on July 23, 2002 to report the amount of penalty revenue collected pursuant to the provisions of Article 9.6 of the General Terms and Conditions of its FERC Gas Tariff during Periods of Daily Balancing (PODB) occurring in the 1995-96 and 1996-97 winter heating seasons, and the proposed distribution of such revenue. Williams' July 23, 2002 filing contained an inadvertent error related to an allocation of refunds to a party who should not have received a refund, as reflected on second revised page 6 of Schedule 1.

Williams states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above, as well as all of Williams' jurisdictional 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 on or before October 8, 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. 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. 02-25547 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02-119-000, *et al.*]

Manchief Power Company, L.L.C., *et al.*; Electric Rate and Corporate Regulation Filings

October 1, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Manchief Power Company, L.L.C., Manchief Holding Company, Mesquite Colorado Holdco, L.L.C., Mesquite Investors, L.L.C., Fulton Cogeneration Associates, L.P.

[Docket No. EC02-119-000]

Take notice that on September 26, 2002, Manchief Power Company, L.L.C. (Manchief Power), Manchief Holding Company (Manchief Holding), Mesquite Colorado Holdco, L.L.C. (Mesquite Colorado) Mesquite Investors, L.L.C. (Mesquite Investors) and Fulton Cogeneration Associates, L.P. (Fulton) (jointly, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act for authorization to effectuate a transfer of the member interests in Manchief Power (which constitutes and indirect change in control over Manchief Power's jurisdictional facilities) from Mesquite Colorado to Manchief Holding. Applicants also requested expedited consideration of the Application and privileged treatment for certain exhibits pursuant to 18 CFR 33.9 and 388.112. Fulton and Manchief are also requesting Section 203 approval, to the extent applicable, to separate their shared market-based rate tariff.

Comment Date: October 17, 2002.

2. Entergy Services, Inc.

[Docket Nos. ER01-1951-003 and EL01-112-001]

Take notice that on September 23, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the

Entergy Operating Companies) tendered for filing a compliance refund report in accordance with the Commission's letter order in Docket Nos. ER01-1951-000, ER01-1951-001, ER01-1951-002, and EL01-112-000.

Comment Date: October 23, 2002.

3. Duke Energy Oakland LLC, Duke Energy South Bay LLC

[Docket Nos. ER02-10-001 and ER02-239-003]

Take notice that on September 26, 2002, Duke Energy South Bay, LLC (DESB) tendered for filing certain revisions to Schedules A and B of its RMR Agreement (RMR Agreement) with the California Independent System Operator (CAISO). The revisions are proposed in light of an Offer of Settlement submitted in the above-referenced dockets.

DESB requests an effective date of January 1, 2002 for these revisions. Copies of the filing have been served upon each person designated on the official service list compiled by the Secretary in these proceedings.

Comment Date: October 17, 2002.

4. Commonwealth Edison Company

[Docket No. ER02-2241-001]

Take notice that on September 27, 2002, Commonwealth Edison Company (ComEd) submitted for filing an unexecuted Agreement for Dynamic Scheduling of Transmission Service between ComEd and Wisconsin Electric Power Company (Wisconsin Electric) under ComEd's Open Access Transmission Tariff (OATT) in compliance with Commonwealth Edison Co., 100 FERC ¶ 61,231 (2002).

ComEd states that a copy of this filing has been served on Wisconsin Electric and the Illinois Commerce Commission.

Comment Date: October 18, 2002.

5. California Independent System Operator Corporation

[Docket No. ER02-2321-003]

Take notice that on September 27, 2002, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the directives contained in the Commission's August 30, 2002 order in the captioned docket concerning Amendment No. 46 to the ISO Tariff, 100 FERC ¶ 61,234.

The ISO has served this filing upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff, and all parties on the official

service list for the captioned docket. In addition, the ISO has posted a copy of the filing on its Home Page.

Comment Date: October 18, 2002.

6. Southern California Edison Company

[Docket Nos. ER02-2604-000 and EC02-118-000]

Take notice that on September 24, 2002, Southern California Edison Company (SCE) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 35.13 of the Commission's regulations and Section 205 of the Federal Power Act, the High Desert Power Project Tie-Line Facilities Rental Agreement (Tie-Line Agreement), dated September 10, 2002, between SCE and High Desert Power Trust, LLC (HDPT). The Tie-Line Agreement specifies, among other things, that SCE shall engineer, design, procure, construct, install, own, operate, and maintain a 230 kV transmission line and related facilities to connect the switchyard at the High Desert Power Project to interconnection facilities at SCE's Victor Substation (Tie-Line). Following the in-service date of the Tie-Line, SCE will lease the Tie-Line to HDPT.

SCE requests that the Tie-Line Agreement be accepted for filing effective September 25, 2002. In addition, SCE also filed with the Commission an application pursuant to Section 203 of the Federal Power Act requesting any authorizations deemed necessary by the Commission for a disposition of jurisdictional facilities, namely a lease of the Tie-Line to HDPT, pursuant to the terms and conditions of the Tie Line Agreement. SCE respectfully requests that this application be granted and authorization be obtained by September 25, 2002.

Copies of this filing were served upon the Public Utilities Commission of the State of California, HDPT and HDPP.

Comment Date: October 15, 2002.

7. Sierra Pacific Power Company, Nevada Power Company

[Docket No. ER02-2609-000]

Take notice that on September 27, 2002, Sierra Pacific Power Company (Sierra) and Nevada Power Company (Nevada Power) tendered for filing pursuant to Section 205 of the Federal Power a revised Joint Open Access Transmission Tariff. This filing is intended to implement retail access in Nevada and to make certain other changes to reflect the current status of operations. Sierra and Nevada Power request that the revised tariff be made effective on November 1, 2002, which is

the date that retail access commences in the state of Nevada.

Comment Date: October 18, 2002.

Standard Paragraph

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. 02-25540 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02-420-000]

Red Lake Gas Storage, L.P.; Notice of Intent to Prepare an Environmental Assessment for the Proposed Red Lake Gas Storage Project and Request for Comments on Environmental Issues

October 1, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Red Lake Gas Storage Project involving construction and operation of facilities by Red Lake Gas Storage, L.P. (RLGS) in Mohave County, Arizona.¹

¹RLGS' application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

These facilities would consist of: 2 underground salt caverns, about 52 miles of various diameter pipeline, 34,000 horsepower (hp) of compression, and appurtenant gas storage facilities. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a RLGS representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. RLGS would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, RLGS could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice RLGS provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (www.ferc.gov).

Summary of the Proposed Project

RLGS proposes to construct the underground gas storage facilities in Mohave County, Arizona to provide firm and interruptible gas storage and hub services in interstate commerce. RLGS seeks authority to construct and operate:

1. Two subsurface solution-mined salt caverns for gas storage;
2. 31.0 miles of 36-inch-diameter natural gas pipeline with a collocated fiber optic cable;
3. 4.7 miles of 6-inch-diameter natural gas pipeline;
4. 11.5 miles of 18-inch-diameter brine disposal pipeline;
5. 4.7 miles of 16-inch-diameter raw-water supply pipeline;
6. four raw water supply wells;
7. four brine disposal wells;
8. a 25,000-horsepower (hp) gas storage field compressor station;
9. a gas dehydration system;
10. a 4.9-mile-long access road;
11. electric power generators; and
12. an interconnecting facility containing a meter station, a 9,000-hp compressor station, and 18-inch-diameter interconnecting pipelines to El Paso Natural Gas Company (0.3-mile-long), Transwestern Pipeline Company (0.2-mile-long), and Questar Southern

Trails Pipeline Company (0.4-mile-long).

The general location of the project facilities is shown in appendix 1.² If you are interested in obtaining detailed maps of a specific portion of the project, send in your request using the form in Appendix 3.

Land Requirements for Construction

Construction of the proposed facilities would require about 746.9 acres of land. Following construction, about 414.3 acres would be maintained as new aboveground facility sites and permanent right-of-way. The remaining 332.6 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us³ to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

Geology and soils
Land use
Water resources, fisheries, and wetlands
Cultural resources
Vegetation and wildlife
Air quality and noise
Endangered and threatened species
Hazardous waste
Public safety

²The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "FERRIS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

³"We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 5.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by RLGs. This preliminary list of issues may be changed based on your comments and our analysis.

Impact on habitats unique to ephemeral waterbodies;

Water use and brine disposal; and
Impact on protected species and/or Federal Species of Concern (SC) including:

Plants—Parish's phacelia (SC), desert monopod, and three-hearts;
Birds—Loggerhead shrike (SC), western burrowing owl, Swainson's hawk;
Mammals—sensitive bat species; and
Reptiles/Amphibians—Sonoran desert tortoise, chuckwalla, and rosy boa

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and/or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Hydro.

Reference Docket No. CP02-420-000. Mail your comments so that they will be received in Washington, DC on or before October 31, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenor play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).⁴ Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding

⁴ Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (www.ferc.gov) 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 Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Linwood A. Watson, Jr.,
Deputy Secretary.

[FR Doc. 02-25541 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2210-082]

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

October 1, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Non-Project Use of Project Lands.

b. *Project No*: 2210-082.

c. *Date Filed*: September 5, 2002.

d. *Applicant*: Appalachian Power Company (APC).

e. *Name of Project*: Smith Mountain.

f. *Location*: The project is located on the Roanoke River, in Bedford,

Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Frank M. Simms, Fossil and Hydro Operations, American Electric Power, 1 Riverside Plaza, Columbus, Ohio 43215, (614) 223-2918.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 219-3097, or e-mail address:

heather.campbell@ferc.gov.

j. *Deadline for filing comments and or motions:* November 1, 2002.

All documents (original and eight copies) should be filed with: Ms. Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P-2210-082) on any comments or motions filed. Comments, 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. The Commission strongly encourages e-filings.

k. *Description of Request:* APC is requesting Commission approval to permit Willard Construction (permittee) to install and operate an extension to an existing stationary covered boat dock located at the Golfer's Crossing development. The extension would provide 12 additional boat slips to the existing 9 boat slips for a total of 21 covered stationary boat slips. No dredging is planned as part of this proposal

l. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, 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, please call the Helpline at (866) 208-3676 or contact

FERCONLINESUPPORT@ferc.gov. For TTY, contact (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214.

In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, 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 at <http://www.ferc.gov> under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-25543 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

October 1, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 11351-010.

c. *Date Filed:* August 16, 2002.

d. *Applicants:* William S. Woods (Transferor) and the Board of Public

Utilities operating the Columbia Power & Water Systems (Transferee).

e. *Name of Project:* Old Columbia Dam.

f. *Location:* On the Duck River in Maury County, Tennessee. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicants Contact:* John R. Collier, Board of Public Utilities, Columbia Power and Water Systems, P.O. Box 379, Columbia, TN 38402-0379.

i. *FERC Contact:* Regina Saizan, (202) 502-8765.

j. *Deadline for filing comments and or motions:* November 1, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, 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. The Commission strongly encourages electronic filings. Please include the project number (P-11351-010) on any comments or motions filed.

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

k. *Description of Transfer:* Applicants request that the license for the Old Columbia Dam Project be transferred from William S. Woods to the Board of Public Utilities operating the Columbia Power & Water Systems.

l. 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 toll-free 1-866-208-3676 or e-mail ferconlinesupport@ferc.gov. For TTY, call (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to

intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-25544 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

October 2, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Transfer of License.

b. Project No.: 8277-027.

c. Date Filed: August 23, 2002.

d. Applicants: Otis Hydroelectric Company (Transferor) and International Paper Company (Transferee).

e. Name of Project: Otis Hydroelectric Project.

f. Location: On the Androscoggin River in Franklin, Oxford, and

Androscoggin Counties, Maine. The project does not utilize federal or tribal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicants Contact: William J. Madden, Jr., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005, (202) 371-5700; Michael Chapman, International Paper Company, 6400 Poplar Avenue, Memphis, TN 38197, (901) 419-3805.

i. FERC Contact: Regina Saizan, (202) 502-8765.

j. Deadline for filing comments and or motions: November 1, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, 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. The Commission strongly encourages electronic filings. Please include the project number (P-8277-027) on any comments or motions filed.

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

k. Description of Transfer: The applicants seek Commission approval to transfer the license for the Otis Hydroelectric Project from Otis Hydroelectric Company to International Paper Company in order to effectuate a corporate reorganization.

l. 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 toll-free 1-866-208-3676 or e-mail FERCONLINESUPPORT@FERC.GOV. Copies are also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions To Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02-25556 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 2, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 12290-000.

c. Date Filed: July 5, 2002.

d. Applicant: Mohawk Hydro, LLC.

e. Name of Project: Mohawk Dam Hydroelectric Project.

f. *Location*: The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers, on the Walhonding River in Coshocton County, Ohio.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact*: Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 502–8763.

j. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, 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. Please include the project number (P–12290–000) on any comments or motions filed.

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

k. *Description of Project*: The proposed run-of-river project using the existing Corps' Mohawk Dam and Reservoir would consist of: (1) A 120-inch-diameter, 200-foot-long steel penstock, (2) a powerhouse containing two generating units with an installed capacity of 8 MW, (3) a 25–kv transmission line approximately 2 miles long, and (4) appurtenant facilities. The project would have an annual generation of 29 GWh.

l. 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. A copy is also available for inspection and reproduction at the Mohawk Hydro LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all

protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,
Secretary.

[FR Doc. 02–25557 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Participation at MISO–PJM–SPP Single Market Design Forum Meeting

October 2, 2002.

The Federal Energy Regulatory Commission hereby gives notice that on October 9, 2002, members of its staff will attend the MISO–PJM–SPP Single Market Design Forum meeting, concerning the development of a joint and common wholesale energy market

for the Midwest Independent Transmission System Operator, Inc. (MISO), PJM Interconnection (PJM) and Southwest Power Pool, Inc. (SPP) regions. The staff's attendance is part of the Commission's ongoing outreach efforts. The meeting is sponsored by MISO, PJM and SPP, and will be held on October 9, 2002, 10:00 a.m. at the La Meridien New Orleans, 614 Canal Street, New Orleans, LA 70130. This meeting is open to the public. The meeting may discuss matters at issue in Docket No. RM01-12-000, Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, and in Docket No. EL02-65-000, *et al.*, Alliance Companies, *et al.*

For more information, contact Mike Gahagan, Vice President, Chief Information Officer & Chief Strategic Officer, Midwest Independent Transmission System Operator, Inc. at (317) 249-5450, or Lawrence R. Greenfield, Senior Attorney, Federal Energy Regulatory Commission at (202) 502-6415 or lawrence.greenfield@ferc.gov.

Magalie R. Salas,

Secretary.

[FR Doc. 02-25555 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7392-5]

Meeting of the Small Systems Affordability Working Group of the National Drinking Water Advisory Council

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under section 10(a)(2) of Pub. L. 92-423, "The Federal Advisory Committee Act," notice is hereby given of the forthcoming meeting of the Small Systems Affordability Work Group, of the National Drinking Water Advisory Council, established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*).

DATES: The affordability work group will meet on October 21-22, 2002 (9 a.m.-5:30 p.m. on October 21 and 8:30 a.m.-3:30 p.m. on October 22).

ADDRESSES: The meeting will be held at RESOLVE Inc., 1255 23rd Street, NW., Suite 275, Washington, DC and is open to the public, but from past experience, seating will likely be limited.

FOR FURTHER INFORMATION CONTACT: For more information on the location and

times of these meetings, or general background information please contact the Safe Drinking Water Hotline (phone: 800-426-4791 or (703)285-1093; e-mail: hotline-sdwa@epa.gov). Members of the public are requested to contact RESOLVE if they plan on attending at (202) 944-2300. Any person needing special accommodations at either of these meetings, including wheelchair access, should contact RESOLVE (contact information previously noted), at least five business days before the meeting so that appropriate arrangements can be made. For technical information contact Mr. Amit Kapadia, Designated Federal Officer, Small Systems Affordability Work Group, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4607M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (e-mail: kapadia.amit@epa.gov; Tel: 202-564-4879).

SUPPLEMENTARY INFORMATION: As part of the 2002 appropriations process, Congress directed EPA to "begin immediately to review the Agency's affordability criteria and how small system variance and exemption programs should be implemented for arsenic" (Conference Report 107-272, page 175). Congress further directed the Agency to prepare a report, which EPA submitted (Report to Congress: Small System Arsenic Implementation Issues: EPA 815-R-02-003), "on its review of the affordability criteria and the administrative actions undertaken or planned to be undertaken by the Agency, as well as potential funding mechanisms for small community compliance and other legislative actions, which, if taken by the Congress, would best achieve appropriate extensions of time for small communities while also guaranteeing maximum compliance." (Conference Report 107-272, page 175).

In evaluating treatment technologies for small systems, EPA currently uses an affordability threshold of 2.5% of median household income. EPA's national-level affordability criteria consist of two major components: an expenditure baseline and an affordability threshold. The expenditure baseline (derived from annual median household water bills) is subtracted from the affordability threshold (a share of median household income that EPA believes to be a reasonable upper limit for these water bills) to determine the expenditure margin (the maximum increase in household water bills that can be imposed by treatment and still be considered affordable). EPA compares

the cost of treatment technologies against the available expenditure margin to determine if an affordable compliance technology can be identified. If EPA cannot identify an affordable compliance technology, then it attempts to identify a variance technology. Findings must be made at both the Federal and State level that compliance technologies are not affordable for small systems before a variance can be granted.

EPA is asking the NDWAC for advice on its national-level affordability criteria and the methodology used to establish these criteria. Taking into consideration the structure of the Safe Drinking Water Act and the limitations of readily available data and information sources, EPA is seeking the Council's opinion of the national level affordability criteria, methodology for deriving the criteria, and approach to applying those criteria to NPDWRs.

As part of the Council's review of EPA's national-level affordability criteria, the Agency is seeking input on (1) the Agency's overall approach, (2) alternatives, if any, to the use of median household income as a metric, (3) alternatives, if any, to 2.5% as a metric, (4) alternatives, if any, to calculating the expenditure baseline, (5) the usefulness of a separate criteria for ground and surface water systems, (6) including an evaluation of the potential availability of financial assistance, and (7) the need for making affordability determinations on a regional basis. Other issue areas may also be discussed. The meeting is open to the public; statements from the public will be taken at the close of the meeting. EPA is not soliciting written comments and is not planning to formally respond to comments.

This is the second work group meeting on this topic. At the first meeting held on September 11-12, the work group was briefed by EPA on the approach to affordability taken by the Agency. At the first meeting, the work group also devised an approach to answer the Agency's charge questions. In this second work group meeting, other technical experts have been invited to speak and the work group will continue with its deliberations.

Dated: October 2, 2002.

William R. Diamond,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 02-25589 Filed 10-7-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9392-4]

Environmental Monitoring and Assessment Program Research Strategy**AGENCY:** Environmental Protection Agency.**ACTION:** Notice of availability of a final document.

SUMMARY: The Environmental Protection Agency's (EPA) is announcing the availability of its *Environmental Monitoring and Assessment Program Research Strategy*, EPA 620/R-02/002. The *Environmental Monitoring and Assessment Program Research Strategy* serves to guide the planning of EPA research efforts, led by the Office of Research and Development (ORD), in developing indicators and unbiased statistical design frameworks that allow the condition of aquatic ecosystems to be assessed at local, tribal, state, regional, and national scales.

ADDRESSES: A limited number of copies of the *Environmental Monitoring and Assessment Program Research Strategy* are available from the National Service Center for Environmental Publications. Request a copy by telephoning 1-800-490-9198 or 513-489-8190 and providing the title and the EPA number for the document, EPA 620/R-02/002. Internet users may download a copy from the EPA's Office of Research and Development home page. The URL is <http://www.epa.gov/ORD/>.

FOR FURTHER INFORMATION CONTACT: Dr. Michael McDonald, the National Health and Environmental Effects Research Laboratory's EMAP Program Manager, (MD-B-243-01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919-541-7973; facsimile: 919-541-4621; e-mail: mcdonald.michael@epa.gov.

SUPPLEMENTARY INFORMATION: In assessing environmental risk and determining restoration priorities, current environmental conditions must be known and rates of change must be measurable. Because of EPA's responsibilities under the Clean Water Act, the Environmental Monitoring and Assessment Program, within the Office of Research and Development, has focused on improving monitoring and assessment methodologies for aquatic ecosystems and their associated landscapes. EMAP has focused on developing indicators and unbiased statistical design frameworks to assess the status and trends of aquatic ecosystems at local, state, regional, and

national scales. As is EMAP's primary mission, the goal of this Strategy is the development of sound scientific approaches to determine the health of the nation's aquatic ecosystems and the stressors most closely associated with impairment.

EMAP efforts ensure that comprehensive and comparable methods are being used at a national level, allowing meaningful assessments and the first regional comparisons of aquatic ecosystem conditions across the entire U.S. These results will significantly improve the quality of performance-based reporting to Congress and will better inform EPA national and regional decisions on priority issues and areas.

State managers and technical staff frequently struggle to balance local information needs with federal reporting requirements. EMAP will continue to work with State partners to develop cost-effective monitoring methodology to aid in decision-making. Results to date from EMAP approach applications in more than 30 States show cost-savings while producing full-coverage condition estimates. Often these cost-savings are used to address priority issues also identified through the EMAP process.

Finally, EMAP's approach and associated indicators serve the Agency and the public by contributing to scientifically based reports such as EPA's upcoming state of the environment report and the Heinz Center's "The State of the Nation's Ecosystems" report. EMAP's efforts help to fill important information needs at both national and at local levels. EMAP information will improve our ability assess our progress in environmental protection and provide valuable information for decision makers and the public.

This *Environmental Monitoring and Assessment Program Research Strategy* was subjected to external peer review by independent scientific experts. The final strategy reflects the comments of both internal and external peer review.

Dated: October 2, 2002.

Paul Gilman,*Assistant Administrator for Research and Development.*

[FR Doc. 02-25583 Filed 10-7-02; 8:45 am]

BILLING CODE 6560-50-P**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION****Availability of Final Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by U.S. Equal Employment Opportunity****AGENCY:** Equal Employment Opportunity Commission.**ACTION:** Notice.

SUMMARY: EEOC hereby announces the availability of its final information quality guidelines on its web site.

DATES: Effective Date: October 1, 2002.

FOR FURTHER INFORMATION CONTACT:

Lizette Molina, Special Assistant to the Director, Office of Information Technology, (202) 663-4446, or Jay Friedman, Director of Strategic Planning and Management Controls Division, Office of Research, Information and Planning, (202) 663-4094.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission (EEOC) has finalized its Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the U.S. Equal Employment Opportunity Commission. These guidelines are currently published on EEOC's Web site www.eeoc.gov. Individuals without Internet access may contact EEOC's Office of Communications and Legislative Affairs at (202) 663-4900 or TTY (202) 663-4494 for a hard copy.

Dated: October 2, 2002.

Sallie T. Hsieh,*Chief Information Officer, Equal Employment Opportunity Commission.*

[FR Doc. 02-25580 Filed 10-7-02; 8:45 am]

BILLING CODE 6570-01-M**FEDERAL COMMUNICATIONS COMMISSION****Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission**

September 26, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to

any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 7, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202-418-0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form No.: FCC Form 601.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 241,335.

Estimated Time Per Response: 1.25 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement and every 10 years (renewal).

Total Annual Burden: 211,169 hours.

Total Annual Cost: \$48,267,100.

Needs and Uses: The FCC Form 601 is a multi-purpose form use dot apply for an authorization to operate radio stations, amend pending applications, modify existing licenses, and perform a variety of other miscellaneous tasks in the Public Mobile Services, Personal Communications Services, General Wireless Communications Services, Private Land Mobile Radio Services,

Broadcast Auxiliary Services, Fixed Microwave Services, Maritime Services (excluding ships), and Aviation Services (excluding aircraft). The Commission is submitting this information collection request to OMB as an extension of currently approved collection for the full-three year clearance.

OMB Control No.: 3060-0855.

Title: Telecommunications Reporting Worksheet and Associated Requirements, CC Docket No. 96-45.

Form No.: FCC Forms 499, 499-A, and 499-Q.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 5,500 respondents; 14,300 responses.

Estimated Time Per Response: 6 hours for the annual report; 9.5 hours for the quarterly reports.

Frequency of Response: On occasion, annual and quarterly reporting requirements, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 106,287 hours.

Total Annual Cost: \$18,000.

Needs and Uses: Telecommunications carriers and certain other providers of telecommunications services must contribute to the support and cost recovery mechanisms for telecommunications relay services, numbering administration, number portability, and universal service. The Commission is submitting this information collection request to OMB as an extension of currently approved collection for the full-three year clearance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02-25478 Filed 10-7-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

September 23, 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, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a

collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 7, 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 Commissions, 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 collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0126.

Title: Section 73.1820, Station Log.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 15,122.

Estimated Time per Response: 0.017 hours to 0.5 hours.

Total Annual Burden: 15,326.

Total Annual Cost: None.

Needs and Uses: 47 CFR 73.1820 requires each licensee of an AM, FM, or TV broadcast station to maintain a station log. Each entry must accurately reflect the station's operation—adjustments to operating parameters for AM stations with directional antennas without an approved sampling system; the actual time of any observation of extinguishment or improper operation of tower lights for all stations; and entry of each test of the Emergency Alert System (EAS) for commercial stations. The FCC staff in field investigations will

use these data to assure that the licensee is operating in accordance with the technical requirements as specified in the FCC Rules and with the station authorization, and is taking reasonable measures to preclude interference to other stations. It is also used to verify that the Emergency Alert System is operating properly.

OMB Control Number: 3060-0329.

Title: Equipment Authorization—Verification, 47 CFR Section 2.955.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5,655.

Estimated Time per Response: 18 hours (avg.).

Frequency of Response:

Recordkeeping: On occasion and one-time reporting requirements; Third party disclosure.

Total Annual Burden: 101,790 hours.

Total Estimated Cost: \$1,131,000.

Needs and Uses: The Commission Rules, 47 CFR parts 15 and 18, require manufacturers of radio frequency (RF) equipment devices to gather and retain technical data on their equipment to verify compliance with established technical standards for each device operated under the applicable Rule part. Testing and verification aid in controlling potential interference to radio communications. The FCC will use these data, as necessary, to investigate complaints of harmful interference or to verify the manufacturer's compliance with FCC regulations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02-25479 Filed 10-7-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 16, 2002.

SUMMARY: The Federal Communications Commissions, 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, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control

number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 7, 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 collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0888.

Title: Part 76, Cable Television Service Pleading and Complaint Rules.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; and Individuals or households.

Number of Respondents: 400.

Estimated Time Per Response: 4 to 40 hours.

Frequency of Response: On occasion requirements; Third party disclosure .

Total Annual Burden: 8,800 hours.

Total Respondent Cost: \$1,600,000.

Needs and Uses: The FCC released a Report and Order (R&O) on January 8, 1999, CS Docket No. 98-54, FCC 98-348. Among other things, the R&O consolidated the general procedural requirements for part 76 in §§ 76.6 through 76.10; eliminated redundant requirements; expanded the types of submissions styled "Petitions for Special Relief" and standardized filing procedures for all petitions seeking a finding of "effective competition;" established a standard provision for part 76 pleadings to provide uniform filing

format, deadlines, etc; required all submissions made pursuant to part 76 to be verified by the submitting party or the party's attorney—including written verification that the signatory had read the submission and that the submission is well grounded in fact and warranted by existing law or good faith argument for extension, modification, or reversal of existing law.

OMB Control Number: 3060-1004.

Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers.

Form Number: N/A.

Type of Review: Revision to an Existing Collection.

Respondents: Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government.

Number of Respondents: 251.

Estimated Time Per Response: 4 to 5 hours.

Frequency of Response: Recordkeeping: Quarterly, Semi-Annual, and One-Time reporting requirements disclosure requirement.

Total Annual Burden: 1,282 hours.

Total Respondent Cost: None.

Needs and Uses: On July 26, 2002, the FCC released an Order to Stay in CC Docket No. 94-102, FCC 02-210 to stay temporarily the application for the wireless Enhanced 911 Phase II interim handset and network upgrade compliance deadlines under 47 CFR 20.18(f) and (g) for non-nationwide carriers that filed waiver requests relating to those deadlines—Tier II Commercial Mobile Radio Service (CMRS) carriers must begin to comply on March 1, 2002 and Tier III CMRS carriers on September 1, 2003. Previously, the FCC had provided similar, but less extensive relief from these rules to the nationwide carriers that had requested it. The FCC also established reporting requirements of December 31, 2002 to monitor the progress and insure the E 911 compliance for these effected nationwide carriers. The Stay now places identical quarterly reporting requirements on Tier II carriers and a one-time reporting requirement on Tier III carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02-25480 Filed 10-7-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 26, 2002.

SUMMARY: The Federal Communications Commissions, 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, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 7, 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 collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-XXXX.
Title: Section 25.139, NGSO FSS Coordination and Information Sharing Between MVDDS Licensees in the 12.2 GHz to 12.7 GHz Band.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 6.
Estimated Time per Response: 6 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 36 hours.

Total Annual Costs: None.

Needs and Uses: On May 23, 2002, the FCC released a *Memorandum Opinion and Order and Second Report and Order*, ET Docket No. 98-206, FCC 02-116, which requires NGSO FSS licensees to maintain a subscriber database in a format that can be readily shared with Multichannel Video Distribution and Data Service (MVDDS) licensees for the purpose of determining compliance with the MVDDS transmitting antenna spacing requirement relating to qualifying existing NGSO FSS subscriber receivers set forth in 47 CFR 101.129.

OMB Control Number: 3060-XXXX.

Title: Section 101.103, Frequency Coordination Procedures.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 354.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 177 hours.

Total Annual Costs: None.

Needs and Uses: On May 23, 2002, the FCC released a *Memorandum Opinion and Order and Second Report and Order*, ET Docket No. 98-206, FCC 02-116, which requires Multichannel Video Distribution and Data Service (MVDDS) licensees to provide notice of intent to construct a proposed antenna to NGSO FSS licensees operating in the 12.2-12.7 GHz frequency band and to maintain an Internet web site of all existing transmitting sites and transmitting antennas that are scheduled for operation within one year including the "in service" dates.

OMB Control Number: 3060-XXXX.

Title: Section 101.1403, Broadcast Carriage Requirements.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 354.

Estimated Time per Response: 1.0 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 354 hours.

Total Annual Costs: None.

Needs and Uses: On May 23, 2002, the FCC released a *Memorandum Opinion and Order and Second Report and Order*, ET Docket No. 98-206, FCC 02-116, which requires Multichannel Video Distribution and Data Service (MVDDS) respondents that meet the statutory definition of Multiple Video Programming Distributor (MVPD) to comply with the broadcast carriage requirements located at 47 U.S.C 325(b)(1). Any MVDDS licensee that is an MVPD must obtain the prior express authority of a broadcast station before retransmitting that station's signal, subject to the exceptions contained in section 325(b)(2) of the Communications Act of 1934, as amended.

OMB Control Number: 3060-XXXX.

Title: Section 101.1413, License Term and Renewal Expectancy.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 354.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion and ten year reporting requirements; Third party disclosure.

Total Annual Burden: 177 hours.

Total Annual Costs: \$8,900.

Needs and Uses: On May 23, 2002, the FCC released a *Memorandum Opinion and Order and Second Report and Order*, ET Docket No. 98-206, FCC 02-116, which requires Multichannel Video Distribution and Data Service (MVDDS) renewal applicants to comply with the requirements to provide substantial service by the end of the ten-year initial license term.

OMB Control Number: 3060-XXXX.

Title: Section 101.1417, Annual Report.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 354.

Estimated Time per Response: 1.0 hours.

Respondents: Business and other for-profit entities.

Frequency of Response: Annual reporting requirements.

Total Annual Burden: 354 hours.

Total Annual Costs: None.

Needs and Uses: On May 23, 2002, the FCC released a *Memorandum Opinion and Order and Second Report and Order* (MO&O and 2nd R&O), which requires Multichannel Video Distribution and Data Service (MVDDS) licensees to file two copies of a "licensee information report" by March 1st of each year with the FCC, for the preceding calendar year. This report

must include the name and address of the licensee, station(s) call letters and primary geographic service area(s), and statistical data for the licensee's station(s). This report enables the Commission to keep track of the number of MVDDS licensee stations.

OMB Control Number: 3060-XXXX.

Title: Section 101.1440, MVDDS

Protection of Direct Broadcast Satellites (DBS).

Form Number: N/A.

Type of Review: New collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 354.

Estimated Time per Response: 40.0 hours.

Respondents: Business and other for-profit entities.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 14,160 hours.

Total Annual Costs: None.

Needs and Uses: On May 23, 2002, the FCC released a *Memorandum Opinion and Order and Second Report and Order* (MO&O and 2nd R&O), ET Docket No. 98-206, FCC 02-116, which requires Multichannel Video Distribution and Data Service (MVDDS) licensees to conduct a survey of the area around its proposed transmitting antenna site to determine the location of all DBS customers that may potentially be effected by the introduction of its MVDDS service. This MO&O and 2nd R&O will ensure that Multichannel Video Distribution and Data Service (MVDDS) signal will not be in excess of the appropriate Equivalent Power Flux Density (EPFD) limits as written in 47 CFR 101.105(a)(4)(ii)(B) is causing interference to DBS customers. If the MVDDS licensee determines that its signal level will exceed the EPFD limit at any DBS customer site, it shall take whatever steps are necessary, up to and including finding a new transmission site.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 02-25477 Filed 10-7-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2579]

Petition for Reconsideration of Action in Rulemaking Proceeding

October 3, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking

proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY-A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863-2893. Oppositions to this petition must be filed by October 23, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Cheyenne, Wyoming).

Number of Petition Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 02-25575 Filed 10-7-02; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1433-DR]

Indiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA-1433-DR), dated September 25, 2002, and related determinations.

EFFECTIVE DATE: September 25, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or Magda.Ruiz@fema.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 25, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Indiana, resulting from severe storms and tornadoes on September 20, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for the Individual and Family Grant program will be limited to 75 percent of the total eligible costs. If Public Assistance and Hazard Mitigation are later requested and warranted, Federal funds provided under these two programs will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William Lokey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Indiana to have been affected adversely by this declared major disaster:

Bartholomew, Blackford, Brown, Daviess, Decatur, Delaware, Fayette, Franklin, Gibson, Grant, Greene, Hamilton, Hancock, Hendricks, Henry, Jay, Johnson, Knox, Lawrence, Madison, Marion, Monroe, Morgan, Owen, Pike, Posey, Randolph, Rush, Shelby, Sullivan, Tipton, and Vanderburg for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02-25524 Filed 10-7-02; 8:45 am]

BILLING CODE 6718-02-P

**FEDERAL EMERGENCY
MANAGEMENT AGENCY****[FEMA-1433-DR]****Indiana; Amendment No. 1 to Notice of
a Major Disaster Declaration****AGENCY:** Federal Emergency
Management Agency (FEMA).**ACTION:** Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana, (FEMA-1433-DR), dated September 25, 2002, and related determinations.

EFFECTIVE DATE: September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or Magda.Ruiz@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 25, 2002:

The counties of Johnson, Knox, Marion, Monroe, Morgan and Posey for Public Assistance (already designated for Individual Assistance).

All counties in the State of Indiana are eligible to apply for assistance under the Hazard Mitigation Grant Program. (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,*Director.*

[FR Doc. 02-25526 Filed 10-7-02; 8:45 am]

BILLING CODE 6718-02-P**FEDERAL EMERGENCY
MANAGEMENT AGENCY****[FEMA-1434-DR]****Texas; Major Disaster and Related
Determinations****AGENCY:** Federal Emergency
Management Agency (FEMA).**ACTION:** Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA-1434-DR), dated September 26, 2002, and related determinations.

EFFECTIVE DATE: September 26, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or Magda.Ruiz@fema.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 26, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from Tropical Storm Fay on September 6, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Scott Wells of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been

affected adversely by this declared major disaster:

Brazoria, Frio, Galveston, La Salle, Live Oak, Matagorda, Nueces, San Patricio, and Wharton Counties for Individual Assistance.

All counties within the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,*Director.*

[FR Doc. 02-25525 Filed 10-7-02; 8:45 am]

BILLING CODE 6718-02-P**FEDERAL EMERGENCY
MANAGEMENT AGENCY****[FEMA-1432-DR]****Wisconsin; Amendment No. 1 to Notice
of a Major Disaster Declaration****AGENCY:** Federal Emergency
Management Agency (FEMA).**ACTION:** Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA-1432-DR), dated September 10, 2002, and related determinations.

EFFECTIVE DATE: September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or Magda.Ruiz@fema.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is reopened. The incident period for this declared disaster is now September 2-6, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02-25527 Filed 10-7-02; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 22, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Steven M. Eldred, Beloit, Wisconsin, as voting trustee of the Helen M. Eldred Voting Trust and the John M. Eldred Voting Trust; and the Eldred Family Limited Partnership I and Eldred Family Limited Partnership II*, both located in Beloit, Wisconsin, to gain control of Centre I Bancorp, Inc., Beloit, Wisconsin, and thereby indirectly acquire First National Bank and Trust Company of Beloit, Beloit, Wisconsin.

2. *Mark B. Richardson, Thetford Center, Vermont, and Kimberly A. Richardson, Atlanta, Georgia; to acquire voting shares of Oakwood Bancorp, Inc., Springfield, Illinois, and thereby indirectly acquire voting shares of United Community Bank, Oakwood, Illinois.*

Board of Governors of the Federal Reserve System, October 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02-25485 Filed 10-7-02; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 1, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *Trustcompany Bancorp, Jersey City, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of The Trust Company of New Jersey, Jersey City, New Jersey.*

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *BTC Financial Corporation, and Midamerica Financial Corporation*, both of Des Moines, Iowa; to acquire 100 percent of the voting shares of Bankers Trust Company, N.A., Cedar Rapids, Iowa, a *de novo* bank.

In addition to this application, Midamerica Financial Corporation, Des Moines, Iowa, also has applied to

become a bank holding company by acquiring Bankers Trust Company, N.A., Cedar Rapids, Iowa, a *de novo* bank.

2. *First Mutual Bancorp of Illinois, Inc., Harvey, Illinois; to merge with Security Bancorp of Dupage, Inc., Naperville, Illinois, and thereby indirectly acquire voting shares of Security Bank of Dupage, Naperville, Illinois.*

Board of Governors of the Federal Reserve System, October 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02-25487 Filed 10-7-02; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at www.ffiec.gov/nic/. Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 22, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Four Oaks Fincorp, Inc., Four Oaks, North Carolina; to engage de novo through Four Oaks Mortgage Services, L.L.C., Four Oaks, North Carolina, and Four Oaks Mortgage Company L.P.,*

Clayton, North Carolina, in mortgage banking, pursuant to §§ 225.28(b)(1) and (b)(2)(viii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02-25486 Filed 10-7-02; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92-463) of October 6, 1972, that the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services, has been renewed for a 2-year period, through September 18, 2004.

CONTACT PERSON FOR FURTHER

INFORMATION: Burma Burch, Committee Management Officer, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., M/S E-72, Atlanta, Georgia 30333, telephone (404) 498-0090, fax (404) 498-0011.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 2, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02-25510 Filed 10-7-02; 8:45 am]

BILLING CODE 4163-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Consultation on Draft Documents: Program Announcement for Health Departments and HIV Prevention Community Planning Guidance

Name: National Center for HIV, STD, and TB Prevention: Meeting.

Time and Date: 8:30 a.m.—5 p.m.; October 17–18, 2002.

Place: Swissotel Atlanta, 3391 Peachtree Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, but limited by the space available. The meeting room accommodates approximately 200 people.

Purpose: The purpose of this consultation is to obtain input into the development of the Program Announcement for Health Departments and the HIV Prevention Community Planning Guidance. The program announcement for health departments will be addressed on October 17 and the community planning guidance will be addressed on October 18.

Contact Person for More Information: Sean David Griffiths, Centers for Disease Control and Prevention, National Center for HIV, STD, and TB Prevention, Division of HIV/AIDS Prevention, 1600 Clifton Rd., NE, M/S E-35, Atlanta, GA 30333, telephone 404-639-3453.

The Director, Management and Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 2, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02-25509 Filed 10-7-02; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee.

Times and Dates: 8:30 a.m.—5 p.m., October 21, 2002. 8:30 a.m.—4 p.m., October 22, 2002.

Place: Swissotel, 3391 Peachtree Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary; the Assistant Secretary for Health; the Director, CDC; and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.*, nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters to be Discussed: Agenda items will include a review of the Draft Guideline for Preventing Transmission of Infectious Agents in Healthcare Settings (formerly Guideline Isolation Precautions in Hospitals); the Draft Guideline for Disinfection and Sterilization in Healthcare Settings; the Draft Guideline for Prevention of Healthcare-associated Pneumonia; and updates on CDC activities of interest to the committee.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michele L. Pearson, M.D., Executive Secretary, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, 1600 Clifton Road, NE, M/S A-07, Atlanta, Georgia 30333, telephone (404) 498-1182.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 2, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02-25508 Filed 10-7-02; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health (ICSH) Cessation Subcommittee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following Subcommittee Meeting.

Name: ICSH Cessation Subcommittee.

Date and Time: October 24, 2002, 8:30 a.m. to 2:15 p.m.

Place: Meeting location to be determined and announced in a separate notice prior to the meeting date. For additional information please contact Monica Swann at 202/205-8500.

Purpose: The ICSH Cessation Subcommittee is charged with making recommendations to ICSH on how best to promote tobacco use cessation. The Subcommittee will develop a report, to be submitted by ICSH to the Secretary, Health and Human Services, which contains action steps for both a Secretary's initiative and public-private partnerships to achieve this outcome. Background documents on ICSH and the ICSH Cessation Subcommittee are available at <http://www.cdc.gov/tobacco/ICSH/index.htm>.

Matter to be Discussed: The ICSH Cessation Subcommittee is convening a meeting and soliciting comments to obtain input from key audiences who must work in a coordinated manner to successfully promote tobacco use cessation. Input should be focused on (1) the opportunities to promote tobacco use cessation, (2) the strategies to overcome barriers and challenges faced by each group to ensure these objectives are implemented, and (3) the types of support DHHS could provide. Individuals and organizations are encouraged to comment in one or both of the following ways: (1) In writing, by submission through the mail or by e-mail; (2) in person, at the Subcommittee meeting. Written comments will also be accepted during the public meeting.

Agenda items are subject to change as priorities dictate.

Status: Open to the public, limited only by the space and time available.

SUPPLEMENTARY INFORMATION: If you would like to attend the Subcommittee meeting, you are encouraged to register by providing your name, title, organization name, address, and telephone number to Jessica Porras (address below). If you would like to speak at the meeting, please notify Jessica Porras when you register. Written comments may be submitted until December 20, 2002; comments received after October 24, 2002, will be shared at future subcommittee meetings.

Submitted comments will be posted on the Internet at <http://www.cdc.gov/tobacco/ICSH/index.htm>.

To submit electronic comments, send via e-mail to jporras@cdc.gov. To submit comments by mail, send to: ICSH Cessation Subcommittee Public Comments (Attn: Ms. Jessica Porras), Office on Smoking and Health, 200 Independence Ave., SW., Room 317-B, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Jessica Porras, Office on Smoking and Health, 200 Independence Ave., Suite 317-B, Washington, DC 20201, 202-205-8500 (telephone) or (202) 205-8313 (facsimile) or jporras@cdc.gov (email).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 2, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02-25511 Filed 10-7-02; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Dockets No. 02N-0354]

Agency Information Collection Activities; Announcement of OMB Approval; the Evaluation of Long-Term Antibiotic Drug Therapy for Persons Involved in Anthrax Remediation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "The Evaluation of Long-Term Antibiotic Drug Therapy for Persons Involved in Anthrax Remediation" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 19, 2002 (67

FR 53805), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910-0494. The approval expires on March 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

Dated: October 1, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02-25538 Filed 10-7-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N-0308]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and "Lookback" Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 7, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management HFA-250, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed

collection of information to OMB for review and clearance.

Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and "Lookback" Requirements (OMB Control Number 0910-0116)—Extension

Under the statutory requirements contained in section 351 of the Public Health Service Act (42 U.S.C. 262), no blood, blood component, or derivative may move in interstate commerce unless: (1) It is propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license; (2) the product complies with regulatory standards designed to ensure safety, purity, and potency; and (3) it bears a label plainly marked with the product's proper name, manufacturer, and expiration date. In addition, under the biologics licensing and quarantine provisions in sections 351 to 361 of the Public Health Service Act (42 U.S.C. 262 to 264) and the general administrative provisions under sections 501 to 503, 505 to 510, and 701 to 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 to 353, 355 to 360, and 371 to 374), FDA has the authority to issue regulations designed to protect the public from unsafe or ineffective biological products and to issue regulations necessary to prevent the introduction, transmission, or spread communicable diseases. The current good manufacturing practices (CGMP) and related regulations implement FDA's statutory authority to ensure the safety, purity, and potency of blood and blood components. The lookback regulations are intended to help ensure the continued safety of the blood supply by providing necessary information to users of blood and blood components and appropriate notification of recipients of transfusion at increased risk for transmitting human immunodeficiency virus (HIV) infection. The information collection requirements in the CGMP and lookback regulations provide FDA with the necessary information to perform its duty to ensure the safety, purity, and potency of blood and blood components. These requirements establish accountability and traceability in the processing and handling of blood and blood components and enables FDA to perform meaningful inspections. The recordkeeping requirements serve preventative and remedial purposes. The disclosure requirements identify the various blood and blood components and important properties of the product, demonstrate that the CGMP requirements have been met, and facilitate the tracing of a product back

to its original source. The reporting requirements inform FDA of any deviations that occur and that may require immediate corrective action. In part 606 (21 CFR part 606), § 606.100(b) requires that written standard operating procedures (SOPs) be maintained for the collection, processing, compatibility testing, storage, and distribution of blood and blood components used for transfusion and manufacturing purposes. Section 606.100(c) requires the review of all pertinent records to a lot or unit of blood prior to release. Any unexplained discrepancy or failure of a lot or unit of final product to meet any of its specifications must be thoroughly investigated, and the investigation, including conclusions and followup, must be recorded. Section 606.110(a) requires a physician to certify in writing that the donor's health permits plateletpheresis or leukapheresis if a variance from additional regulatory standards for a specific product is used when obtaining the product from a specific donor for a specific recipient. Section 606.110(b) requires establishments to request prior Center for Biologics Evaluation and Research (CBER) approval for plasmapheresis of donors who do not meet donor requirements. Section 606.151(e) requires that records of expedited transfusions in life threatening emergencies be maintained. So that all steps in the collection, processing, compatibility testing, storage and distribution, quality control, and transfusion reaction reports and complaints for each unit of blood and blood components can be clearly traced, § 606.160 requires that legible and indelible contemporaneous records of each significant step be made and maintained for no less than 5 years. Section 606.165 requires that distribution and receipt records be maintained to facilitate recalls, if necessary. Section 606.170(a) requires records to be maintained of any reports of complaints of adverse reactions as a result of blood collection or transfusion. Each such report must be thoroughly investigated, and a written report, including conclusions and followup, must be prepared and maintained. Section 606.170(b) requires that fatal complications of blood collection and transfusions be reported to FDA as soon as possible and that a written report shall be submitted within 7 days. Section 610.46(a) (21 CFR 610.46(a)) requires blood establishments to notify consignees, within 72 hours, of repeatedly reactive tests results so that previously collected blood and blood components are appropriately

quarantined. Section 610.46(b) requires blood establishments to notify consignees of licensed, more specific test results for HIV within 30 calendar days after the donors's repeatedly reactive test. Section 610.47(b) (21 CFR 610.47(b)) requires transfusion services not subject to Centers for Medicare and Medicaid Services (CMS) regulations to notify physicians of prior donation recipients or to notify recipients themselves of the need for HIV testing and counseling. In addition to the CGMPs in part 606, there are regulations in part 640 (21 CFR part 640) that require additional standards for certain blood and blood components as follows: Sections 640.3(a); 640.4(a); 640.25(b)(4) and (c)(1); 640.27(b); 640.31(b); 640.33(b); 640.51(b); 640.53(c); 640.56(b) and (d); 640.61; 640.63(b)(3), (e)(1), and (e)(3); 640.65(b)(2); 640.66; 640.71(b)(1); 640.72; 640.73; and 640.76(a) and (b). The information collection requirements and estimated burdens for these regulations are included in the part 606 burden estimates, as described below. Respondents to this collection of information are licensed and unlicensed blood establishments inspected by FDA, and other transfusion services inspected by CMS. Based on FDA's registration system, there are approximately 2,841 registered blood establishments inspected by FDA. Of these 2,841 establishments, approximately 1,349 perform pheresis, approximately 1,041 annually collect 27 million units of Whole Blood, blood components including Source Plasma, and Source Leukocytes and are required to follow FDA "lookback" procedures, and approximately 166 are registered transfusion services that are not subject to CMS's "lookback" regulations. Based on CMS records there are an estimated 4,980 transfusion services. The following reporting and recordkeeping estimates are based on information provided by industry, CMS, and FDA experience. In table 1 of this document, we estimate that there are approximately 3,500 repeat donors that will test reactive on a screening test for HIV. FDA estimates that each repeat donor has donated two previous times, and an average of three components were made from each donation. Under § 610.46(a) and (b), this estimate results in 21,000 (3,500 x 2 x 3) notifications of the HIV screening test results to consignees by collecting establishments for the purpose of quarantining affected blood and blood components, and another 21,000 (3,500 x 2 x 3) notifications to consignees of subsequent test results. Under

§ 606.110(b), licensed establishments submit supplements to their biologics license applications to request prior CBER approval of plasmapheresis donors who do not meet donor requirements. The information collection requirements for § 606.110(b) are reported under OMB control number

0910-0338. In table 2 of this document, the recordkeeping chart reflects the estimate that 95 percent of the recordkeepers, which collect 98 percent of the blood supply, had developed SOPs as part of their customary and usual business practice. Establishments may minimize burdens associated with

CGMP and related regulations by using model SOPs developed by industries' accreditation organizations. These accreditation organizations represent almost all registered blood establishments.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
606.170(b) ²	70	1	70	20	1,400
610.46(a)	1,041	20	21,000	0.17	3,570
610.46(b)	1,041	20	21,000	0.17	3,570
610.47(b)	166	0.7	116	1	116
Total					8,656

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² The reporting requirement in § 640.73, which addresses the reporting of fatal donor reactions, is included in the estimate for § 606.170(b).

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

21 CFR Section	No. of Record-keepers	Annual Frequency per Record-keeping	Total Annual Records	Hours per Record	Total Hours
606.100(b) ²	249 ⁵	1	249	24	5,976
606.100(c)	249 ⁵	10	2,490	1	2,490
606.110(a) ³	67 ⁶	5	335	0.5	168
606.151(e)	249 ⁵	12	2,988	0.083	248
606.160 ⁴	249 ⁵	2,169	540,000	0.5	270,000
606.165	249 ⁵	2,169	540,000	0.083	44,820
606.170(a)	249 ⁵	12	2,988	1	2,988
Total					326,690

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² The recordkeeping requirements in §§ 640.3(a)(1), 640.4(a)(1), and 640.66, which address the maintenance of SOPs, are included in the estimate for § 606.100(b).

³ The recordkeeping requirements in § 640.27(b), which address the maintenance of donor health records for the plateletpheresis, are included in the estimate for § 606.110(a).

⁴ The recordkeeping requirements in §§ 640.3(a)(2); 640.3(f); 640.4(a)(2); 640.25(b)(4) and (c)(1); 640.31(b); 640.33(b); 640.51(b); 640.53(b) and (d); 640.61; 640.63(b)(3), (e)(1), and (e)(3); 640.65(b)(2); 640.71(b)(1); 640.72; and 640.76(a) and (b); which address the maintenance of various records, are included in the estimate for § 606.160.

⁵ 5 percent of CMS and FDA-registered blood establishments (0.05 x 4,890).

⁶ 5 percent of pheresis establishments (1,349).

Dated: October 1, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02-25539 Filed 10-7-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Biological Response Modifiers 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 Biological Response Modifiers Advisory Committee. This meeting was originally announced in the **Federal Register** of September 27, 2002 (67 FR 61142). The amendment is being made to reflect a change in the *Date and Time, Agenda, Procedure, Location, and Closed Committee Deliberations* portions of the meeting. The meeting was originally scheduled as a teleconference on October 10, 2002, from 5:30 p.m. to 7:30 p.m. at the National Institutes of Health, Bldg. 29C, 29 Lincoln Dr., Bethesda, MD. FDA added a discussion topic related to

retrovirus vectors in gene therapies for the treatment of patients with severe combined immune deficiency disease to the meeting and the meeting will be held on October 10 at the Hilton DC North—Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD from 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Gail Dapolito or Rosanna L. Harvey, Center for Biologics Evaluation and Research (HFM-71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-827-0314 or call the FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12389. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 27, 2002 (67 FR 61142), FDA announced that a meeting of the Biological Response Modifiers Advisory Committee would be held on October 10, 2002. This amendment is to update information provided earlier pertaining to the meeting. On page 61142, beginning in the last column, the *Date and Time*, *Location*, *Agenda*, *Procedure*, and *Closed Committee Deliberations* portions of the meeting are amended to read as follows:

Date and Time: The meeting will be held on October 10, 2002, from 8 a.m. to approximately 5:30 p.m.

Location: Hilton DC North—Gaithersburg, Grand Ballrooms A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD.

Agenda: On October 10, 2002, the committee will discuss safety issues recently identified related to retrovirus vectors in gene therapies for the treatment of patients with severe combined immune deficiency disease and receive updates on individual research programs in the Division of Cell and Gene Therapies and the Division of Therapeutic Proteins.

Procedure: On October 10, 2002, from 8 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending

before the committee. Written submissions may be made to the contact person by October 9. Oral presentations from the public will be scheduled between approximately 11:30 a.m. to 12:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 9, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On October 10, 2002, between approximately 5 p.m. and 5:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of individual research programs in the Center for Biologics Evaluation and Research.

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: October 2, 2002.

Linda Arey Skladany,
Senior Associate Commissioner for External Relations.

[FR Doc. 02-25641 Filed 10-3-02; 3:17 pm]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these

documents, call the SAMHSA Reports Clearance Officer on (301) 443-7978.

*Drug Abuse Warning Network (OMB number 0930-0078, revision—*The Drug Abuse Warning Network (DAWN) is an on-going data system that currently collects information on drug abuse-related medical emergencies and deaths as reported from about 466 hospitals and 137 medical examiners/coroners (ME/C) nationwide. DAWN provides national and metropolitan estimated of substances involved with drug-related ED visits; disseminates information about substances involved in deaths investigated by participating ME/Cs; provides a means for monitoring drug abuse patterns, trends, and the emergence of new substances; assesses health hazards associated with drug use; and generates information for national and local drug abuse policy and program planning. DAWN data are used by Federal, State, and local agencies, as well as universities, pharmaceutical companies, and the press.

The current emergency department (ED) sample supports estimates for the coterminous U.S. and 21 major metropolitan areas. Beginning in 2003, the DAWN case definition will be changed to obtain more consistent and reliable data on drug abuse cases and also will capture additional cases where drug use/misuse led to ED visits or deaths for conditions such as adverse drug reactions, underage drinking and malicious poisonings. To achieve better geographic and population coverage, the ED sample will be expanded to support estimates for the full U.S. and 48 metropolitan areas. By the end of 2005, the sample will include approximately 841 hospitals. To achieve complete coverage, approximately 66 non-participating ME/C jurisdictions in the 48 metropolitan areas targeted for the ED expansion will be added in lieu of a sample. Facilities (EDs and ME/Cs) will continue to use the current forms in early 2003 to complete reporting on events occurring through December 2002, but will use the revised forms for all events occurring from 1/1/2003 forward.

TOTAL REPORTING BURDEN FOR DAWN: CLOSEOUT 2002¹

	Number of respondent facilities	Estimated number of responses per respondent	Estimated time per response	Gross burden hours	IR ² reporting hours	Total adjusted burden hours
EMERGENCY DEPARTMENTS						
Current Forms	166	36	9 min.	896	448	448
Current eHERS ³	300	36	9min (.15 hr)	1,620	810	810

TOTAL REPORTING BURDEN FOR DAWN: CLOSEOUT 2002¹—Continued

	Number of respondent facilities	Estimated number of responses per respondent	Estimated time per response	Gross burden hours	IR ² reporting hours	Total adjusted burden hours
ED Logs	166	16	2 min (.03 hr)	88	44	44
Subtotal						1,302
MEDICAL EXAMINERS/CORONERS						
Current Forms	20	70	15 min (.25 hr)	350	175	175
Current eMERS ⁴	119	70	15 min (.25 hr)	2,082	1,041	1,041
ME Logs	20	40	2 min (.03 hr)	26	13	13
Subtotal						1,229
Total						2,531

¹ Number of respondents and respondent burden from December 1, 2002 through March 31, 2003 (EDs) and December 1, 2002 through September 30, 2003 (ME/Cs), using the current reporting forms.

² There is no burden associated with reporting by Independent Reporters (IRs), so these hours are not included in Total Adjusted Burden. Half (50 percent) of all respondents are Independent Reporters.

³ eHERS is the electronic Hospital Emergency Reporting System.

⁴ eMERS is the electronic Medical Examiner Reporting System.

TOTAL REPORTING BURDEN FOR DAWN: JANUARY 1, 2003–NOVEMBER 30, 2005¹

	Number of respondent facilities	Estimated number of responses per respondent	Estimated time per response	Gross burden hours	IR ² reporting hours	Total adjusted burden hours
EMERGENCY DEPARTMENTS						
Revised ³ Forms	100	354	12 min (.20 hr)	7,080	3,540	3,540
Revised eHERS ⁴	786	1,596	12 min (.20 hr)	250,891	125,446	125,445
Subtotal						128,985
MEDICAL EXAMINERS/CORONERS						
Revised ³ Forms	20	60	15 min (.25 hr)	300	150	150
Revised eMERS ⁵	259	264	15 min (.25 hr)	17,094	8,547	8,547
Subtotal						8,697
Total						137,682

¹ Number of respondents and respondent burden shown as totals from January 1, 2003 through November 30, 2005, using the revised reporting forms.

² There is no burden associated with reporting by Independent Reporters (IRs), so these hours are not included in Total Adjusted Burden. Half (50 percent) of all respondents are Independent Reporters.

³ Burden associated with transmittal forms is included in the overall burden associated with identifying and reporting a DAWN case. Transmittal forms are tally sheets used as part of the reporting process, and burden cannot be segregated from completing episode forms.

⁴ eHERS is the electronic Hospital Emergency Reporting System.

⁵ eMERS is the electronic Medical Examiner Reporting System.

TOTAL AND ANNUALIZED BURDEN, ENTIRE CLEARANCE PERIOD: DECEMBER 1, 2003–NOVEMBER 30, 2005

	Total adjusted burden hours
Emergency Departments, Total Burden	130,287
Medical Examiners/Coroners, Total Burden	9,926
Total Burden (ED and ME/C)	140,213
Annualized Burden	46,738

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 1, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–25512 Filed 10–7–02; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4736–N–15]

Notice of Proposed Information Collection for Public Comment for the Housing Choice Voucher Program: Application, Utilities, Inspection, Financial Reports, Request for Lease Approval, Certificate of Family Participation, Housing Voucher, Portability Information, Housing Assistance Payments Contracts (Tenant-Based)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* December 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing & Urban

Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT:

Mildred M. Hamman, (202) 708–0614, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number). For hearing- and speech-impaired persons, this telephone number may be accessed via TTY (Text telephone) by calling the Federal Information Relay Services at 1–800–877–8339 (toll-free).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

This Notice also Lists the following Information:

Title of Proposal: Housing Choice Voucher Program: Application, Utilities, Inspection, Financial Reports, Request for Lease Approval, Certificate of Family Participation, Housing Voucher, Portability Information, Housing Assistance Payments (HAP) Contracts—Tenant-Based.

OMB Control Number: 2577–0169.

Description of the Need for the Information and Proposed Use: Housing Agencies (HAS) will prepare an application for funding which specifies the number of units requested, as well as the HA's objectives and plans for administering the Housing Choice Voucher Program. The application is reviewed by the HUD Field Office and ranked according to the HA's administrative capability, the need for housing assistance, and other factors specified in the Notice of Funding Availability (NOFA). The HAS must establish a utility allowance schedule for all utilities and other services. Units

must be inspected, using HUD-prescribed forms to determine if the units meet the housing quality standards (HQS) of the Program. HAS are also required to maintain financial reports in accordance with accepted accounting standards. The required financial statements are similar to those prepared by any responsible business or organization at the end of the fiscal year. The family must complete and submit to the HA a Request for Lease Approval when it finds a unit which is suitable for its needs, a Certificate of Family Participation, and Housing Voucher. Initial HAs will use a standardized form to submit portability information to the receiving HA who will also use the form for monthly portability billing. HAs and Owners will enter into HAP Contracts each providing information on rents, payments, certifications, notifications, and Owner agreement in a form acceptable to the HA.

Agency form numbers: HU–52515, HUD–52517, HUD–52580, HUD–52580–A, HUD–52646, HUD–52665, HUD–52667, HUD–52672, HUD–52673, HUD–52581, HUD–52641, HUD–52641–A, HUD–52642, HUD–52642–A (Forms HUD–52595 and HUD–52663 are canceled.)

Members of the Affected Public: State and Local Governments, businesses or other for profits.

Estimation of the Total Number of Hours Needed to Prepare the Information Collection including the Number of Respondents, Frequency of response, and hours of response: The number of respondents (2500 HAs + 410,000 families + 100,000 tenant-based owners + 100 project-based owners) = 512,600 total respondents, hours per response varies for each form, frequency, annually and on-occasion, total annual burden hours 650,975.¹

Status of the Proposed Information Collection: Extension with change only adding the HAP Contracts.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 30, 2002.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

¹ The cancellation of two forms and the transfer of elevated blood level match which is now covered under Part 35 reduced the burden hours by 6,025 hours. The addition of the information collection in the HAP Contracts will void the decrease keeping the burden hour the same.

Funding Application

Section 8 Tenant-Based Assistance
 Rental Certificate Program
 Rental Voucher Program

**U.S. Department of Housing
 and Urban Development**
 Office of Public and Indian Housing

OMB Approval No. 2577-0169
 (exp.9/30/2002)

Send the original and two copies of this application form and attachments to the local HUD Field Office

Public reporting burden for this collection of information is estimated to average 1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Eligible applicants (HAs) must submit this information when applying for grant funding for tenant-based housing assistance programs under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). HUD will use the information to evaluate an application based on selection criteria stated in the Notice of Funding Availability (NOFA). HUD will notify the HA of its approval/disapproval of the funding application. Responses are required to obtain a benefit from the Federal Government. The information requested does not lend itself to confidentiality.

Name and Mailing Address of the Housing Agency (HA) requesting housing assistance payments

Application/Project No. (HUD use only)

Do you have an ACC with HUD	No	Yes	Date of Application	Legal Area of Operation (area in which the HA has authority under State and local law to administer the program)
for Section 8 Certificates?	<input type="checkbox"/>	<input type="checkbox"/>		
for Section 8 Vouchers?	<input type="checkbox"/>	<input type="checkbox"/>		

A. Area(s) From Which Families To Be Assisted Will Be Drawn.			
Locality (city, town, etc.)	County	Congressional District	Units

B. Proposed Assisted Dwelling Units. (Complete this section based on the unit sizes of the applicants at the top of the waiting list)	Number of Dwelling Units by Bedroom Size							Total Dwelling Units
	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	
Certificates								
Vouchers								

C. Average Monthly Adjusted Income. Complete this section based on actual incomes of current participants by unit size. Enter average monthly adjusted income for each program separately and only for the unit sizes requested in Section B.							
	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR
Certificates	\$	\$	\$	\$	\$	\$	\$
Vouchers	\$	\$	\$	\$	\$	\$	\$

D. Need for Housing Assistance. Demonstrate that the project requested in this application is responsive to the condition of the housing stock in the community and the housing assistance needs of low-income families residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

E. Housing Quality Standards (HQS). (Check applicable box)

HUD's HQS will be used with no modifications Attached for HUD approval are HQS acceptability criteria variations

F. New HA Information. Complete this section if HA currently does not administer a tenant-based certificate or voucher program.

Financial and Administrative Capability. Describe the experience of the HA in administering housing or other programs and provide any other relevant information which evidences present or potential management capability for the proposed rental assistance program. Submit this narrative on a separate page.

Qualification as an HA. Demonstrate that the applicant qualifies as an HA and is legally qualified and authorized to administer the funds applied for in this application. Submit the relevant enabling legislation and a supporting legal opinion.

Note: If this application is approved, the HA must submit for HUD approval a utility allowance schedule and budget documents.

G. Certifications. The following certifications are incorporated as a part of this application form. The signature on the last page of this application of the HA representative authorized to sign the application signifies compliance with the terms of these certifications.**Equal Opportunity Certification**

The Housing Agency (HA) certifies that:

(1) The HA will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations issued pursuant thereto (24 CFR Part 1) which state that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will take any measures necessary to effectuate this agreement.

(2) The HA will comply with the Fair Housing Act (42 U.S.C. 3601-19) and regulations issued pursuant thereto (24 CFR Part 100) which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status, or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.

(3) The HA will comply with Executive Order 11063 on Equal Opportunity in Housing which prohibits discrimination because of race, color, creed, or national origin in housing and related facilities provided with Federal financial assistance and HUD regulations (24 CFR Part 107).

(4) The HA will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR Part 8) which state that no otherwise qualified individual with handicaps in the United States shall solely by reason of the handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(5) The HA will comply with the provisions of the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and regulations issued pursuant thereto (24 CFR Part 146) which state that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under a program or activity receiving Federal financial assistance.

(6) The Housing Agency will comply with the provisions of Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and regulations issued pursuant thereto (28 CFR Part 35) which state that subject to the provisions of Title II, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity.

The following provisions apply only to housing assisted with Project-Based Certificates:

(7) The HA will comply with Executive Order 11246 and all regulations pursuant thereto (41 CFR Chapter 60-1) which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity.

(8) The HA will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) and regulations issued pursuant thereto (24 CFR Part 135), which require that, to the greatest extent feasible, opportunities for training and employment be given to low-income persons residing within the unit of local government for metropolitan area (or non-metropolitan county) in which the project is located.

Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Certification Regarding Drug-Free Workplace Requirements

Instructions for Drug-Free Workplace Requirements Certification:

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).
5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).
6. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees or subrecipients or subcontractors in covered workplaces).

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

Check if there are workplaces on file that are not identified here.

Housing Agency Signature

Signature of HA Representative

Print or Type Name of Signatory

Phone No.

Date

**Request for Tenancy Approval
Housing Choice Voucher Program**

**U.S. Department of Housing
and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 9/30/2002)

Public reporting burden for this collection of information is estimated to average .08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

Eligible families submit this information to the Public Housing Authority (PHA) when applying for housing assistance under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). The PHA uses the information to determine if the family is eligible, if the unit is eligible, and if the lease complies with program and statutory requirements. Responses are required to obtain a benefit from the Federal Government. The information requested does not lend itself to confidentiality.

1. Name of Public Housing Agency (PHA)	2. Address of Unit (street address, apartment number, city, State & zip code)
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3. Requested Beginning Date of Lease	4. Number of Bedrooms	5. Year Constructed	6. Proposed Rent	7. Security Deposit Amt.	8. Date unit available for inspection
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9. Type of House/Apartment

Single Family Detached
 Semi-Detached / Row House
 Manufactured Home
 Garden / Walkup
 Elevator / High-Rise

10. If this unit is subsidized, indicate type of subsidy:

Section 202
 Section 221(d)(3)(BMIR)
 Section 236 (Insured or noninsured)
 Section 515 Rural Development

11. Utilities and Appliances

The owner shall provide or pay for the utilities and appliances indicated below by an "O". The tenant shall provide or pay for the utilities and appliances indicated below by a "T". Unless otherwise specified below, the owner shall pay for all utilities and appliances provided by the owner.

Item	Specify fuel type	Provided by	Paid by
Heating	<input type="checkbox"/> Natural gas <input type="checkbox"/> Bottle gas <input type="checkbox"/> Oil or Electric <input type="checkbox"/> Coal or Other		
Cooking	<input type="checkbox"/> Natural gas <input type="checkbox"/> Bottle gas <input type="checkbox"/> Oil or Electric <input type="checkbox"/> Coal or Other		
Water Heating	<input type="checkbox"/> Natural gas <input type="checkbox"/> Bottle gas <input type="checkbox"/> Oil or Electric <input type="checkbox"/> Coal or Other		
Other Electric			
Water			
Sewer			
Trash Collection			
Air Conditioning			
Refrigerator			
Range/Microwave			
Other (specify)			

12. Owner's Certifications. By executing this request, the owner certifies that:

a. The most recent rent charged for the above unit was _____

\$ _____ per month. This rent included the following utilities: _____

The reason for any differences between the prior rent and the proposed rent in Block 6 is: _____

b. The program regulation requires the PHA to certify that the rent charged to the housing choice voucher tenant is not more than the rent charged for other unassisted comparable units. **Please complete the following section for most recent comparable units most recently leased within the same complex.**

Address and unit number	Date Rented	Rental Amount
1.		
2.		
3.		

c. The owner (including a principal or other interested party) is not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.

d. Check one of the following:

____ Lead-based paint disclosure requirements do not apply because this property was built on or after January 1, 1978.

____ The unit, common areas servicing the unit, and exterior painted surfaces associated with such unit or common areas have been found to be lead-based paint free by a lead-based paint inspector certified under the Federal certification program or under a federally accredited State or Tribal certification program.

____ A completed statement is attached containing disclosure of known information on lead-based paint and/or lead-based paint hazards in the unit, common areas or exterior painted surfaces, including a statement that the owner has provided the lead hazard information pamphlet to the family.

13. PHA Determinations.

a. **The PHA has not screened the family's behavior or suitability for tenancy. Such screening is the owner's own responsibility.**

b. The owner's lease must include word-for-word all provisions of the HUD tenancy addendum.

c. The PHA will arrange for inspection of the unit and will notify the owner and family as to whether or not the unit will be approved.

Print or Type Name of Owner or Other Party Authorized to Execute the Lease		Print or Type Name of Family	
Signature		Signature (s)	
Business Address		Present Address of Family (street address, apartment no., city, State, & zip code)	
Telephone Number	Date (mm/dd/yyyy)	Telephone Number	Date (mm/dd/yyyy)

Inspection Checklist
Housing Choice Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(Exp. 9/30/2002)

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number. This collection of information is authorized under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). The information is used to determine if a unit meets the housing quality standards of the section 8 rental assistance program.

Name of Family	Tenant ID Number	Date of Request (mm/dd/yyyy)
Inspector	Neighborhood/Census Tract	Date of Inspection (mm/dd/yyyy)
Type of Inspection <input type="checkbox"/> Initial <input type="checkbox"/> Special <input type="checkbox"/> Reinspection	Date of Last Inspection (mm/dd/yyyy)	PHA

A. General Information		Housing Type (check as appropriate) <input type="checkbox"/> Single Family Detached <input type="checkbox"/> Duplex or Two Family <input type="checkbox"/> Row House or Town House <input type="checkbox"/> Low Rise: 3, 4 Stories, Including Garden Apartment <input type="checkbox"/> High Rise: 5 or More Stories <input type="checkbox"/> Manufactured Home <input type="checkbox"/> Congregate <input type="checkbox"/> Cooperative <input type="checkbox"/> Independent Group Residence <input type="checkbox"/> Single Room Occupancy <input type="checkbox"/> Shared Housing <input type="checkbox"/> Other
Inspected Unit	Year Constructed (yyyy)	
Full Address (including Street, City, County, State, Zip)		
Number of Children in Family Under 6		
Owner Name of Owner or Agent Authorized to Lease Unit Inspected Phone Number Address of Owner or Agent		

B. Summary Decision On Unit (To be completed after form has been filled out)		
<input type="checkbox"/> Pass <input type="checkbox"/> Fail <input type="checkbox"/> Inconclusive	Number of Bedrooms for Purposes of the FMR or Payment Standard	Number of Sleeping Rooms

Inspection Checklist					Final Approval Date (mm/dd/yyyy)
Item No.	1. Living Room	Yes Pass	No Fail	In-Conc.	Comment
1.1	Living Room Present				
1.2	Electricity				
1.3	Electrical Hazards				
1.4	Security				
1.5	Window Condition				
1.6	Ceiling Condition				
1.7	Wall Condition				
1.8	Floor Condition				

* Room Codes: 1 = Bedroom or Any Other Room Used for Sleeping (regardless of type of room); 2 = Dining Room or Dining Area; 3 = Second Living Room, Family Room, Den, Playroom, TV Room; 4 = Entrance Halls, Corridors, Halls, Staircases; 5 = Additional Bathroom; 6 = Other

Item No.	1. Living Room (Continued)	Yes Pass	No Fail	In-Conc.	Comment	Final Approval Date (mm/dd/yyyy)
1.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?				<input type="checkbox"/> Not Applicable	
2. Kitchen						
2.1	Kitchen Area Present					
2.2	Electricity					
2.3	Electrical Hazards					
2.4	Security					
2.5	Window Condition					
2.6	Ceiling Condition					
2.7	Wall Condition					
2.8	Floor Condition					
2.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?				<input type="checkbox"/> Not Applicable	
2.10	Stove or Range with Oven					
2.11	Refrigerator					
2.12	Sink					
2.13	Space for Storage, Preparation, and Serving of Food					
3. Bathroom						
3.1	Bathroom Present					
3.2	Electricity					
3.3	Electrical Hazards					
3.4	Security					
3.5	Window Condition					
3.6	Ceiling Condition					
3.7	Wall Condition					
3.8	Floor Condition					
3.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?				<input type="checkbox"/> Not Applicable	
3.10	Flush Toilet in Enclosed Room in Unit					
3.11	Fixed Wash Basin or Lavatory in Unit					
3.12	Tub or Shower in Unit					
3.13	Ventilation					

Item No.	4. Other Rooms Used For Living and Halls	Yes Pass	No Fail	In-Conc.	Comment	Final Approval Date (mm/dd/yyyy)
4.1	Room Code* and Room Location <input type="checkbox"/>				(Circle One) Right/Center/Left (Circle One) Front/Center/Rear ____ Floor Level	
4.2	Electricity/Illumination					
4.3	Electrical Hazards					
4.4	Security					
4.5	Window Condition					
4.6	Ceiling Condition					
4.7	Wall Condition					
4.8	Floor Condition					
4.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?				<input type="checkbox"/> Not Applicable	
4.10	Smoke Detectors					
4.1	Room Code* and Room Location <input type="checkbox"/>				(Circle One) Right/Center/Left (Circle One) Front/Center/Rear ____ Floor Level	
4.2	Electricity/Illumination					
4.3	Electrical Hazards					
4.4	Security					
4.5	Window Condition					
4.6	Ceiling Condition					
4.7	Wall Condition					
4.8	Floor Condition					
4.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?				<input type="checkbox"/> Not Applicable	
4.10	Smoke Detectors					
4.1	Room Code* and Room Location <input type="checkbox"/>				(Circle One) Right/Center/Left (Circle One) Front/Center/Rear ____ Floor Level	
4.2	Electricity/Illumination					
4.3	Electrical Hazards					
4.4	Security					
4.5	Window Condition					
4.6	Ceiling Condition					
4.7	Wall Condition					
4.8	Floor Condition					
4.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?				<input type="checkbox"/> Not Applicable	
4.10	Smoke Detectors					

Item No.	4. Other Rooms Used For Living and Halls	Yes Pass	No Fail	In-Conc.	Comment	Final Approval Date (mm/dd/yyyy)
4.1	Room Code* and Room Location <input type="checkbox"/>	(Circle One) Right/Center/Left			(Circle One) Front/Center/Rear	____ Floor Level
4.2	Electricity/Illumination					
4.3	Electrical Hazards					
4.4	Security					
4.5	Window Condition					
4.6	Ceiling Condition					
4.7	Wall Condition					
4.8	Floor Condition					
4.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?				<input type="checkbox"/> Not Applicable	
4.10	Smoke Detectors					
4.1	Room Code* and Room Location <input type="checkbox"/>	(Circle One) Right/Center/Left			(Circle One) Front/Center/Rear	____ Floor Level
4.2	Electricity/Illumination					
4.3	Electrical Hazards					
4.4	Security					
4.5	Window Condition					
4.6	Ceiling Condition					
4.7	Wall Condition					
4.8	Floor Condition					
4.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?				<input type="checkbox"/> Not Applicable	
4.10	Smoke Detectors					
5. All Secondary Rooms (Rooms not used for living)						
5.1	None Go to Part 6					
5.2	Security					
5.3	Electrical Hazards					
5.4	Other Potentially Hazardous Features in these Rooms					

Item No.	6. Building Exterior	Yes Pass	No Fail	In-Conc.	Comment	Final Approval Date (mm/dd/yyyy)
6.1	Condition of Foundation					
6.2	Condition of Stairs, Rails, and Porches					
6.3	Condition of Roof/Gutters					
6.4	Condition of Exterior Surfaces					
6.5	Condition of Chimney					
6.6	Lead Paint: Exterior Surfaces Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed 20 square feet of total exterior surface area?				<input type="checkbox"/> Not Applicable	
6.7	Manufactured Home: Tie Downs					
7. Heating and Plumbing						
7.1	Adequacy of Heating Equipment					
7.2	Safety of Heating Equipment					
7.3	Ventilation/Cooling					
7.4	Water Heater					
7.5	Approvable Water Supply					
7.6	Plumbing					
7.7	Sewer Connection					
8. General Health and Safety						
8.1	Access to Unit					
8.2	Fire Exits					
8.3	Evidence of Infestation					
8.4	Garbage and Debris					
8.5	Refuse Disposal					
8.6	Interior Stairs and Common Halls					
8.7	Other Interior Hazards					
8.8	Elevators					
8.9	Interior Air Quality					
8.10	Site and Neighborhood Conditions					
8.11	Lead-Based Paint: Owner's Certification				<input type="checkbox"/> Not Applicable	

If the owner is required to correct any lead-based paint hazards at the property including deteriorated paint or other hazards identified by a visual assessor, a certified lead-based paint risk assessor, or certified lead-based paint inspector, the PHA must obtain certification that the work has been done in accordance with all applicable requirements of 24 CFR Part 35. The Lead-Based Paint Owner Certification must be received by the PHA before the execution of the HAP contract or within the time period stated by the PHA in the owner HQS violation notice. Receipt of the completed and signed Lead-Based Paint Owner Certification signifies that all HQS lead-based paint requirements have been met and no re-inspection by the HQS inspector is required.

C. Special Amenities (Optional)

This Section is for optional use of the HA. It is designed to collect additional information about other positive features of the unit that may be present. Although the features listed below are not included in the Housing Quality Standards, the tenant and HA may wish to take them into consideration in decisions about renting the unit and the reasonableness of the rent.
Check/list any positive features found in relation to the unit.

1. Living Room

- High quality floors or wall coverings
- Working fireplace or stove
- Balcony, patio, deck, porch
- Special windows or doors
- Exceptional size relative to needs of family
- Other: (Specify)

2. Kitchen

- Dishwasher
- Separate freezer
- Garbage disposal
- Eating counter/breakfast nook
- Pantry or abundant shelving or cabinets
- Double oven/self cleaning oven, microwave
- Double sink
- High quality cabinets
- Abundant counter-top space
- Modern appliance(s)
- Exceptional size relative to needs of family
- Other: (Specify)

3. Other Rooms Used for Living

- High quality floors or wall coverings
- Working fireplace or stove
- Balcony, patio, deck, porch
- Special windows or doors
- Exceptional size relative to needs of family
- Other: (Specify)

4. Bath

- Special feature shower head
- Built-in heat lamp
- Large mirrors
- Glass door on shower/tub
- Separate dressing room
- Double sink or special lavatory
- Exceptional size relative to needs of family
- Other: (Specify)

5. Overall Characteristics

- Storm windows and doors
- Other forms of weatherization (e.g., insulation, weather stripping)
- Screen doors or windows
- Good upkeep of grounds (i.e., site cleanliness, landscaping, condition of lawn)
- Garage or parking facilities
- Driveway
- Large yard
- Good maintenance of building exterior
- Other: (Specify)

6. Disabled Accessibility

Unit is accessible to a particular disability. Yes No
Disability _____

D. Questions to ask the Tenant (Optional)

1. Does the owner make repairs when asked? Yes No
2. How many people live there? _____
3. How much money do you pay to the owner/agent for rent? \$ _____
4. Do you pay for anything else? (specify) _____
5. Who owns the range and refrigerator? (insert O = Owner or T = Tenant) Range _____ Refrigerator _____ Microwave _____
6. Is there anything else you want to tell us? (specify) Yes No

E. Inspection Summary/Comments (Optional)

Provide a summary description of each item which resulted in a rating of "Fail" or "Pass with Comments."

Tenant ID Number	Inspector	Date of Inspection (mm/dd/yyyy)	Address of Inspected Unit
Type of Inspection	Initial <input type="checkbox"/>	Special <input type="checkbox"/>	Reinspection <input type="checkbox"/>
Item Number	Reason for "Fail" or "Pass with Comments" Rating		

Continued on additional page Yes No

Previous editions are obsolete

Inspection Form
Housing Choice Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 9/30/2002)

Public reporting burden for this collection of information is estimated to average 0.25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number. This collection of information is authorized under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). The information is used to determine if a unit meets the housing quality standards of the section 8 rental assistance program.

PHA	Tenant ID Number	Date of Request (mm/dd/yyyy)
Inspector	Date Last Inspection (mm/dd/yyyy)	Date of Inspection (mm/dd/yyyy)
Neighborhood/Census Tract	Type of Inspection <input type="checkbox"/> Initial <input type="checkbox"/> Special <input type="checkbox"/> Reinspection	Project Number

A. General Information

Street Address of Inspected Unit				Housing Type (check as appropriate) <input type="checkbox"/> Single Family Detached <input type="checkbox"/> Duplex or Two Family <input type="checkbox"/> Row House or Town House <input type="checkbox"/> Low Rise: 3,4 Stories, Including Garden Apartment <input type="checkbox"/> High Rise: 5 or More Stories <input type="checkbox"/> Manufactured Home <input type="checkbox"/> Congregate <input type="checkbox"/> Cooperative <input type="checkbox"/> Independent Group Residence <input type="checkbox"/> Single Room Occupancy <input type="checkbox"/> Shared Housing <input type="checkbox"/> Other:(Specify)			
City	County	State	Zip				
Name of Family		Current Telephone of Family					
Current Street Address of Family							
City	County	State	Zip				
Number of Children in Family Under 6							
Name of Owner or Agent Authorized to Lease Unit Inspected			Telephone of Owner or Agent				
Address of Owner or Agent							

B. Summary Decision on the Unit
(to be completed after the form has been filled in)

Housing Quality Standard Pass or Fail

- 1. Fail** If there are any checks under the column headed "Fail" the unit fails the minimum housing quality standards. Discuss with the owner the repairs noted that would be necessary to bring the unit up to the standard.
 - 2. Inconclusive** If there are no checks under the column headed "Fail" and there are checks under the column headed "Inconclusive," obtain additional information necessary for a decision (question owner or tenant as indicated in the item instructions given in this checklist). Once additional information is obtained, change the rating for the item and record the date of verification at the far right of the form.
 - 3. Pass** If neither (1) nor (2) above is checked, the unit passes the minimum housing quality standards. Any additional conditions described in the right hand column of the form should serve to (a) establish the precondition of the unit, (b) indicate possible additional areas to negotiate with the owner, (c) aid in assessing the reasonableness of the rent of the unit, and (d) aid the tenant in deciding among possible units to be rented. The tenant is responsible for deciding whether he or she finds these conditions acceptable.
- Unit Size:** Count the number of bedrooms for purposes of the FMR or Payment Standard. Record in the box provided.
- Year Constructed:** Enter from Line 5 of the Request for Tenancy Approval form. Record in the box provided.
- Number of Sleeping Rooms:** Count the number of rooms which could be used for sleeping, as identified on the checklist. Record in the box provided.

C. How to Fill Out This Checklist

Complete the checklist on the unit to be occupied (or currently occupied) by the tenant. Proceed through the inspection as follows:

- | Area | Checklist Category |
|--------------------------|--|
| room by room | 1. Living Room |
| | 2. Kitchen |
| | 3. Bathroom |
| | 4. All Other Rooms Used for Living |
| | 5. All Secondary Rooms Not Used for Living |
| basement or utility room | 6. Heating & Plumbing |
| outside | 7. Building Exterior |
| overall | 8. General Health & Safety |
- Each part of the checklist will be accompanied by an explanation of the item to be inspected.
- Important:** For each item numbered on the checklist, **check one box only** (e.g., check one box only for item 1.4 "Security," in the Living Room.)
- In the space to the right of the description of the item, if the decision on the item is: "Fail" write what repairs are necessary; If "Inconclusive" write in details.
- Also, if "Pass" but there are some conditions present that need to be brought to the attention of the owner or the tenant, write these in the space to the right.
- If it is an annual inspection, record to the right of the form any repairs made since the last inspection. If possible, record reason for repair (e.g., ordinary maintenance, tenant damage).
- If it is a complaint inspection, fill out only those checklist items for which complaint is lodged. Determine, if possible, tenant or owner cause.
- Once the checklist has been completed, return to Part B (Summary Decision on the Unit).

1. Living Room

1.1 Living Room Present

Note: If the unit is an efficiency apartment, consider the living room present.

1.2 Electricity

In order to qualify, the outlets must be present and properly installed in the baseboard, wall or floor of the room. Do not count a single duplex receptacle as two outlets, i.e., there must be **two** of these in the room, or **one** of these **plus a permanently installed ceiling or wall light fixture**.

Both the outlets and/or the light must be working. Usually, a room will have sufficient lights or electrical appliances plugged into outlets to determine workability. Be sure light fixture does not fail just because the bulb is burned out.

Do not count any of the following items or fixtures as outlets/fixtures: Table or floor lamps (these are **not** permanent light fixtures); ceiling lamps plugged into socket; extension cords.

If the electric service to the unit has been temporarily turned off check "Inconclusive." Contact owner or manager after inspection to verify that electricity functions properly when service is turned on. Record this information on the checklist.

1.3 Electrical Hazards

Examples of what this means: broken wiring; noninsulated wiring; frayed wiring; improper types of wiring, connections or insulation; wires lying in or located near standing water or other unsafe places; light fixture hanging from electric wiring without other firm support or fixture; missing cover plates on switches or outlets; badly cracked outlets; exposed fuse box connections; overloaded circuits evidenced by frequently "blown" fuses (ask the tenant).

Check "Inconclusive" if you are uncertain about severity of the problem and seek expert advice.

1.4 Security

"Accessible to outside" means: doors open to the outside or to a common public hall; windows accessible from the outside (e.g. basement and first floor); windows or doors leading onto a fire escape, porch or other outside place that can be reached from the ground.

"Lockable" means: the window or door has a properly working lock, or is nailed shut, or the window is not designed to be opened. A storm window lock that is working properly is acceptable. Windows that are nailed shut are acceptable only if these windows are not needed for ventilation or as an alternate exit in case of fire.

1.5 Window Condition

Rate the windows in the room (including windows in doors).

"Severe deterioration" means that the window no longer has the capacity to keep out the wind and the rain or is a cutting hazard. Examples are: missing or broken-out panes; dangerously loose cracked panes; windows that will not close; windows that, when closed, do not form a reasonably tight seal.

If more than one window in the room is in this condition, give details in the space provided on the right of the form.

If there is only "moderate deterioration" of the windows the item should "Pass." "Moderate deterioration" means windows which are reasonably weather-tight, but show evidence of some aging, abuse, or lack of repair. Signs of deterioration are: minor crack in window pane; splintered sill; signs of some minor rotting in the window frame or the window itself; window panes loose because of missing window putty. Also for deteriorated and peeling paint see 1.9. If more than one window is in this condition, give details in the space provided on the right of the form.

1.6 Ceiling Condition

"Unsound or hazardous" means the presence of such serious defects that either a potential exists for structural collapse or that large cracks or holes allow significant drafts to enter the unit. The condition includes: severe bulging or buckling; large holes; missing parts; falling or in danger of falling loose surface materials (other than paper or paint).

Pass ceilings that are basically sound but have some nonhazardous defects, including: small holes or cracks; missing or broken ceiling tiles; water stains; soiled surfaces; unpainted surfaces; peeling paint (for peeling paint see item 1.9).

1.7 Wall Condition

"Unsound or hazardous" includes: serious defects such that the structural safety of the building is threatened, such as severe buckling, bulging or leaning; damaged or loose structural members; large holes; air infiltration.

Pass walls that are basically sound but have some nonhazardous defects, including: small or shallow holes; cracks; loose or missing parts; unpainted surfaces; peeling paint (for peeling paint see item 1.9).

1.8 Floor Condition

"Unsound or hazardous" means the presence of such serious defects that a potential exists for structural collapse or other threats to safety (e.g., tripping) or large cracks or holes allow substantial drafts from below the floor. The condition includes: severe buckling or major movements under walking stress; damaged or missing parts.

Pass floors that are basically sound but have some nonhazardous defects, including: heavily worn or damaged floor surface (for example, scratches or gouges in surface, missing portions of tile or linoleum, previous water damage). If there is a floor covering, also note the condition, especially if badly worn or soiled. If there is a floor covering, including paint or sealant, also note the conditions, especially if badly worn, soiled or peeling (for peeling paint, see 1.9).

1.9 Lead-Based Paint

Housing Choice Voucher Units If the unit was built January 1, 1978, or after, no child under age six will occupy or currently occupies it, is a 0-BR, elderly or handicapped unit with no children under age six on the lease or expected, has been certified lead-based paint free by a certified lead-based paint inspector (no lead-based paint present or no lead-based paint present after removal of lead-based paint.), check NA and do not inspect painted surfaces.

This requirement applies to all painted surfaces (building components) within the unit. (Do not include tenant belongings). Surfaces to receive a visual assessment for deteriorated paint include walls, floors, ceilings, built in cabinets (sink bases), baseboards, doors, door frames, windows systems including mullions, sills, or frames and any other painted building component within the unit. Deteriorated paint includes any painted surface that is peeling, chipping, chalking, cracking, damaged or otherwise separated from the substrate.

All deteriorated paint surfaces **more than 2 sq. ft. in any one interior room or space, or more than 10% of the total surface area of an interior type of component with a small surface area (i.e., window sills, baseboards, and trim)** must be stabilized (corrected) in accordance with all safe work practice requirements and clearance is required. **If the deteriorated painted surface is less than 2 sq. ft. or less than 10% of the component, only stabilization is required. Clearance testing is not required.** Stabilization means removal of deteriorated paint, repair of the substrate, and application of a new protective coating or paint. Lead-Based Paint Owner Certification is required following stabilization activities, except for *de minimis level repairs*.

1. Living Room

For each numbered item, check one box only.

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date (mm/dd/yyyy) of final approval
		Yes, Pass	No, Fail	Inconclusive		
1.1 Living Room Present	Is there a living room?	<input type="checkbox"/>	<input type="checkbox"/>			
1.2 Electricity	Are there at least two working outlets or one working outlet and one working light fixture?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
1.3 Electrical Hazards	Is the room free from electrical hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
1.4 Security	Are all windows and doors that are accessible from the outside lockable?	<input type="checkbox"/>	<input type="checkbox"/>			
1.5 Window Condition	Is there at least one window, and are all windows free of signs of severe deterioration or missing or broken out panes?	<input type="checkbox"/>	<input type="checkbox"/>			
1.6 Ceiling Condition	Is the ceiling sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
1.7 Wall Condition	Are the walls sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
1.8 Floor Condition	Is the floor sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
1.9 Lead-Based Paint	Are all painted surfaces free of deteriorated paint?	<input type="checkbox"/>	<input type="checkbox"/>			
	If no, does deteriorated surfaces exceed two square feet and/or more than 10% of a component?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Not Applicable	

Additional Comments: (Give Item Number)

Comments continued on a separate page Yes No

2. Kitchen

2.1 Kitchen Area Present

Note: A kitchen is an area used for preparation of meals. It may be either a separate room or an area of a larger room (for example, a kitchen area in an efficiency apartment).

2.2 - 2.9 Explanation for these items is the same as that provided for "Living Room" with the following modifications:

2.2 Electricity

Note: The requirement is that at least one outlet and one permanent light fixture are present and working.

2.5 Window Condition

Note: The absence of a window does not fail this item in the kitchen. If there is no window, check "Pass."

2.10 Stove or Range with Oven

Both an oven and a stove (or range) with top burners must be present and working. If either is missing and you know that the owner is responsible for supplying these appliances, check "Fail." Put check in "Inconclusive" column if the tenant is responsible for supplying the appliances and he or she has not yet moved in. Contact tenant or prospective tenant to gain verification that facility will be supplied and is in working condition. Hot plates are not acceptable substitutes for these facilities.

An oven is not working if it will not heat up. To be working a stove or range must have all burners working and knobs to turn them off and on. Under "working condition," also look for hazardous gas hook-ups evidenced by strong gas smells; these should fail. (Be sure that this condition is not confused with an unlit pilot light -a condition that should be noted, but does not fail.)

If both an oven and a stove or range are present, but the gas or electricity are turned off, check "Inconclusive." Contact owner or manager to get verification that facility works when gas is turned on. If both an oven and a stove or range are present and working, but defects exist, check "Pass" and note these to the right of the form. Possible defects are marked, dented, or scratched surfaces; cracked burner ring; limited size relative to family needs.

A microwave oven may be substituted for a tenant-supplied oven and stove (or range).

A microwave oven may be substituted for an owner-supplied oven and stove (or range) if the tenant agrees and microwave ovens are furnished instead of ovens and stoves (or ranges) to both subsidized and unsubsidized tenants in the building or premises.

2.11 Refrigerator

If no refrigerator is present, use the same criteria for marking either "Fail" or "Inconclusive" as were used for the oven and stove or range.

A refrigerator is not working if it will not maintain a temperature low enough to keep food from spoiling over a reasonable period of time. If the electricity is turned off, mark "Inconclusive." Contact owner (or tenant if unit is occupied) to get verification of working condition.

If the refrigerator is present and working but defects exist, note these to the right of the form. Possible minor defects include: broken or missing interior shelving; dented or scratched interior or exterior surfaces; minor deterioration of door seal; loose door handle.

2.12 Sink

If a permanently attached kitchen sink is not present in the kitchen or kitchen area, mark "Fail." A sink in a bathroom or a portable basin will not satisfy this requirement. A sink is not working unless it has running hot and cold water from the faucets and a properly connected and properly working drain (with a "gas trap"). In a vacant apartment, the hot water may have been turned off and there will be no hot water. Mark this "Inconclusive." Check with owner or manager to verify that hot water is available when service is turned on.

If a working sink has defects, note this to the right of the item. Possible minor defects include: dripping faucet; marked, dented, or scratched surface; slow drain; missing or broken drain stopper.

2.13 Space for Storage, Preparation, and Serving of Food

Some space must be available for the storage, preparation, and serving of food. If there is no built-in space for food storage and preparation, a table used for food preparation and a portable storage cabinet will satisfy the requirement. If there is no built-in space, and no room for a table and portable cabinet, check "Inconclusive" and discuss with the tenant. The tenant makes the final determination as to whether or not this space is acceptable.

If there are some minor defects, check "Pass" and make notes to the right. Possible defects include: marked, dented, or scratched surfaces; broken shelving or cabinet doors; broken drawers or cabinet hardware; limited size relative to family needs.

2. Kitchen

For each numbered item, check one box only.

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date (mm/dd/yyyy) of final approval
		Yes, Pass	No, Fail	Inconclusive		
2.1	Kitchen Area Present Is there a kitchen?	<input type="checkbox"/>	<input type="checkbox"/>			
2.2	Electricity Are there at least one working outlet and one working, permanently installed light fixture?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
2.3	Electrical Hazards Is the kitchen free from electrical hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
2.4	Security Are all windows and doors that are accessible from the outside lockable?	<input type="checkbox"/>	<input type="checkbox"/>			
2.5	Window Condition Are all windows free of signs of deterioration or missing or broken out panes?	<input type="checkbox"/>	<input type="checkbox"/>			
2.6	Ceiling Condition Is the ceiling sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
2.7	Wall Condition Are the walls sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
2.8	Floor Condition Is the floor sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
2.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If no, does deteriorated surfaces exceed two square feet and/or less than 10% of a component?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Not Applicable	
2.10	Stove or Range with Oven Is there a working oven, and a stove (or range) with top burners that work? If no oven and stove (or range) are present, is there a microwave oven and, if microwave is owner-supplied, do other tenants have microwaves instead of an oven and stove (or range)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
2.11	Refrigerator Is there a refrigerator that works and maintains a temperature low enough so that food does not spoil over a reasonable period of time?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
2.12	Sink Is there a kitchen sink that works with hot and cold running water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
2.13	Space for Storage, Preparation, and Serving of Food Is there space to store, prepare, and serve food?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Additional Comments: (Give Item Number)(Use an additional page if necessary)

Comments continued on a separate page Yes No

3. Bathroom

3.1 Bathroom Present

Most units have easily identifiable bathrooms (i.e., a separate room with toilet, washbasin and tub or shower). In some cases, however, you will encounter units with scattered bathroom facilities (i.e., toilet, washbasin and tub or shower located in separate parts of the unit). At a minimum, there must be an enclosure around the toilet. In this case, count the enclosure around the toilet as the bathroom and proceed with 3.2-3.9 below, with respect to this enclosure. If there is more than one bathroom that is normally used, rate the one that is in best condition for Part 3. If there is a second bathroom that is also used, complete Part 4 of the checklist for this room. (See Inspection Manual for additional notes on rating the second bathroom.)

3.2 - 3.9 Explanation for these items is the same as that provided for "Living Room" with the following modifications:

3.2 Electricity

Note: The requirement is that at least one permanent light fixture is present and working

3.3 Electrical Hazards

Note: In addition to the previously mentioned hazards, outlets that are located where water might splash or collect are considered an electrical hazard.

3.5 Window Condition

Note: The absence of a window does not fail this item in the bathroom (see item 3.13, Ventilation, for relevance of window with respect to ventilation). If there is no window, but a working vent system is present, check "Pass."

3.7 Wall Condition

Note: Include under nonhazardous defects (that would pass, but should be noted) the following: broken or loose tile; deteriorated grouting at tub/wall and tub/floor joints, or tiled surfaces; water stains.

3.8 Floor Condition

Note: Include under nonhazardous defects (that would pass, but should be noted) the following: missing floor tiles; water stains.

3.10 Flush Toilet in Enclosed Room in Unit

The toilet must be contained within the unit, be in proper operating condition, and be available for the exclusive use of the occupants of the unit (i.e., outhouses or facilities shared by occupants of other units are not acceptable). It must allow for privacy.

Not working means: the toilet is not connected to a water supply; it is not connected to a sewer drain; it is clogged; it does not have a trap; the connections, vents or traps are faulty to the extent that severe leakage of water or escape of gases occurs; the flushing mechanism does not function properly. If the water to the unit has been turned off, check "Inconclusive." Obtain verification from owner or manager that facility works properly when water is turned on.

Comment to the right of the form if the toilet is "present, exclusive, and working," but has the following types of defects: constant running; chipped or broken porcelain; slow draining.

If drain blockage is more serious and occurs further in the sewer line, causing backup, check item 7.6, "Fail," under the plumbing and heating part of the checklist. A sign of serious sewer blockage is the presence of numerous backed-up drains.

3.11 Fixed Wash Basin or Lavatory in Unit

The wash basin must be permanently installed (i.e., a portable wash basin does not satisfy the requirement). Also, a kitchen sink used to pass the requirements under Part 2 of the checklist (kitchen facilities) cannot also serve as the bathroom wash basin. The wash basin may be located separate from the other bathroom facilities (e.g., in a hallway).

Not working means: the wash basin is not connected to a system that will deliver hot and cold running water; it is not connected to a properly operating drain; the connectors (or vents or traps) are faulty to the extent that severe leakage of water or escape of sewer gases occurs. If the water to the unit or the hot water unit has been turned off, check "Inconclusive." Obtain verification from owner or manager that the system is in working condition.

Comment to the right of the form if the wash basin is "present and working," but has the following types of minor defects: insufficient water pressure; dripping faucets; minor leaks; cracked or chipped porcelain; slow drain (see discussion above under 3.10).

3.12 Tub or Shower in Unit

Not present means that neither a tub nor shower is present in the unit. Again, these facilities need not be in the same room with the rest of the bathroom facilities. They must, however, be private.

Not working covers the same requirements detailed above for wash basin (3.11).

Comment to the right of the form if the tub or shower is present and working, but has the following types of defects: dripping faucet; minor leaks; cracked porcelain; slow drain (see discussion under 3.10); absent or broken support rod for shower curtain.

3.13 Ventilation

Working vent systems include: ventilation shafts (non-mechanical vents) and electric fans. Electric vent fans must function when switch is turned on. (Make sure that any malfunctions are not due to the fan not being plugged in.) If electric current to the unit has not been turned on (and there is no openable window), check "Inconclusive." Obtain verification from owner or manager that system works. Note: exhaust vents must be vented to the outside, attic, or crawlspace.

3. Bathroom

For each numbered item, check one box only.

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date (mm/dd/yyyy) of final approval
		Yes, Pass	No, Fail	Inconclusive		
3.1	Bathroom Present (See description) Is there a bathroom?	<input type="checkbox"/>	<input type="checkbox"/>			
3.2	Electricity Is there at least one permanently installed light fixture?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3.3	Electrical Hazards Is the bathroom free from electrical hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3.4	Security Are all windows and doors that are accessible from the outside lockable?	<input type="checkbox"/>	<input type="checkbox"/>			
3.5	Window Condition Are all windows free of signs of deterioration or missing or broken out panes?	<input type="checkbox"/>	<input type="checkbox"/>			
3.6	Ceiling Condition Is the ceiling sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
3.7	Wall Condition Are the walls sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
3.8	Floor Condition Is the floor sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
3.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If no, does deteriorated surfaces exceed two square feet and/or more than 10% of a component?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Not Applicable	
3.10	Flush Toilet in Enclosed Room in Unit Is there a working toilet in the unit for the exclusive private use of the tenant?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3.11	Fixed Wash Basin or Lavatory in Unit Is there a working, permanently installed wash basin with hot and cold running water in the unit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3.12	Tub or Shower Is there a working tub or shower with hot and cold running water in the unit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3.13	Ventilation Are there openable windows or a working vent system?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Additional Comments: (Give Item Number)(Use an additional page if necessary)

Comments continued on a separate page Yes No

4. Other Room Used for Living and Halls

Complete an "Other Room" checklist for as many "other rooms used for living" as are present in the unit and not already noted in Parts 1, 2, and 3 of the checklist. See the discussion below for definition of "used for living." Also complete an "Other Room" checklist for all entrance halls, corridors, and staircases that are located within the unit and are part of the area used for living. If a hall, entry and/or stairway are contiguous, rate them as a whole (i.e., as part of one space).

Additional forms for rating "Other Rooms" are provided in the checklist.

Definition of "used for living." Rooms "used for living" are areas of the unit that are walked through or lived in on a regular basis. Do not include rooms or other areas that have been permanently, or near permanently, closed off or areas that are infrequently entered. For example, do not include a utility room, attached shed, attached closed-in porch, basement, or garage if they are closed off from the main living area or are infrequently entered. Do include any of these areas if they are frequently used (e.g., a finished basement/playroom, a closed-in porch that is used as a bedroom during summer months). Occasional use of a washer or dryer in an otherwise unused room does not constitute regular use.

If the unit is vacant and you do not know the eventual use of a particular room, complete an "Other Room" checklist if there is any chance that the room will be used on a regular basis. If there is no chance that the room will be used on a regular basis, do not include it (e.g., an unfinished basement) since it will be checked under Part 5, All Secondary Rooms (Rooms not used for living).

4.1 Room Code and Room Location

Enter the appropriate room code given below:

Room Codes:

- 1 = Bedroom or any other room used for sleeping (regardless of type of room)
- 2 = Dining Room or Dining Area
- 3 = Second Living Room, Family Room, Den, Playroom, TV Room
- 4 = Entrance Halls, Corridors, Halls, Staircases
- 5 = Additional Bathroom (also check presence of sink trap and clogged toilet)
- 6 = Other

Room Location: Write on the line provided the location of the room with respect to the unit's width, length and floor level as if you were standing outside the unit facing the entrance to the unit:

right/left/center: record whether the room is situated to the right, left, or center of the unit.

front/rear/center: record whether the room is situated to the back, front or center of the unit.

floor level: identify the floor level on which the room is located.

If the unit is vacant, you may have some difficulty predicting the eventual use of a room. Before giving any room a code of 1 (bedroom), the room must meet all of the requirements for a "room used for sleeping" (see items 4.2 and 4.5).

4.2 - 4.9 Explanations of these items are the same as those provided for "Living Room" with the following modifications:

4.2 Electricity/Illumination

If the room code is not a "1," the room must have a means of natural or artificial illumination such as a permanent light fixture, wall outlet present, or light from a window in the room or near the room. If any required item is missing, check "Fail." If the electricity is turned off, check "Inconclusive."

4.5 Window Condition

Any room used for sleeping must have at least one window. If the windows in sleeping rooms are designed to be opened, at least one window must be openable. The minimum standards do not require a window in "other rooms." Therefore, if there is no window in another room not used for sleeping, check "Pass," and note "no window" in the area for comments.

4.6 Smoke Detectors

At least one battery-operated or hard-wired smoke detector must be present and working on each level of the unit, including the basement, but not the crawl spaces and unfinished attic.

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards).

If the dwelling unit is occupied by any hearing-impaired person, smoke detectors must have an alarm system designed for hearing-impaired persons as specified in NFPA 74 (or successor standards).

If the unit was under HAP contract prior to April 24, 1993, owners who installed battery-operated or hard-wired smoke detectors in compliance with HUD's smoke detector requirements, including the regulations published on July 30, 1992 (57 FR 33846), will not be required subsequently to comply with any additional requirements mandated by NFPA 74 (i.e. the owner would not be required to install a smoke detector in a basement not used for living purposes, nor would the owner be required to change the location of the smoke detectors that have already been installed on the other floors of the unit). In this case, check "Pass" and note under comments.

Additional Notes

For staircases, the adequacy of light and condition of the stair rails and railings is covered under Part 8 of the checklist (General Health and Safety)

4. Other Rooms Used for Living and Halls For each numbered item, check one box only.

4.1 Room Location

----- right/left/center: the room is situated to the right, left, or center of the unit.
 ----- front/rear/center: the room is situated to the back, front or center of the unit.
 ----- floor level: the floor level on which the room is located.

Room Code

- 1 = Bedroom or Any Other Room Used for Sleeping (regardless of type of room)
- 2 = Dining Room or Dining Area
- 3 = Second Living Room, Family Room, Den, Playroom, TV Room
- 4 = Entrance Halls, Corridors, Halls, Staircases
- 5 = Additional Bathroom (also check presence of sink trap and clogged toilet)
- 6 = Other:

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date (mm/dd/yyyy) of final approval
		Yes, Pass	No, Fail	Inconclusive		
4.2 Electricity/Illumination	If Room Code is a 1, are there at least two working outlets or one working outlet and one working, permanently installed light fixture? If Room Code is not a 1, is there a means of illumination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4.3 Electrical Hazards	Is the room free from electrical hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4.4 Security	Are all windows and doors that are accessible from the outside lockable?	<input type="checkbox"/>	<input type="checkbox"/>			
4.5 Window Condition	If Room Code is a 1, is there at least one window? And, regardless of Room Code, are all windows free of signs of severe deterioration or missing or broken-out panes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4.6 Ceiling Condition	Is the ceiling sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
4.7 Wall Condition	Are the walls sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
4.8 Floor Condition	Is the floor sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
4.9 Lead-Based Paint	Are all painted surfaces free of deteriorated paint? If no, does deteriorated surfaces exceed two square feet and/or more than 10% of a component?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Not Applicable	
4.10 Smoke Detectors	Is there a working smoke detector on each level? Do the smoke detectors meet the requirements of NFPA 74? In units occupied by the hearing impaired, is there an alarm system connected to the smoke detector?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Additional Comments: (Give Item Number)(Use an additional page if necessary)

Comments continued on a separate page Yes No

4. Supplemental for Other Rooms Used for Living and Halls For each numbered item, check one box only.

4.1 Room Location

_____ right/left/center: the room is situated to the right, left, or center of the unit.
 _____ front/rear/center: the room is situated to the back, front or center of the unit.
 _____ floor level: the floor level on which the room is located.

Room Code

- 1 = Bedroom or Any Other Room Used for Sleeping (regardless of type of room)
- 2 = Dining Room or Dining Area
- 3 = Second Living Room, Family Room, Den, Playroom, TV Room
- 4 = Entrance Halls, Corridors, Halls, Staircases
- 5 = Additional Bathroom (also check presence of sink trap and clogged toilet)
- 6 = Other:

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date of final approval
		Yes, Pass	No, Fail	Inconclusive		
4.2 Electricity/Illumination	If Room Code is a 1, are there at least two working outlets or one working outlet and one working, permanently installed light fixture? If Room Code is not a 1, is there a means of illumination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4.3 Electrical Hazards	Is the room free from electrical hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4.4 Security	Are all windows and doors that are accessible from the outside lockable?	<input type="checkbox"/>	<input type="checkbox"/>			
4.5 Window Condition	If Room Code is a 1, is there at least one window? And, regardless of Room Code, are all windows free of signs of severe deterioration or missing or broken-out panes?	<input type="checkbox"/>	<input type="checkbox"/>			
4.6 Ceiling Condition	Is the ceiling sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
4.7 Wall Condition	Are the walls sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
4.8 Floor Condition	Is the floor sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
4.9 Lead-Based Paint	Are all painted surfaces free of deteriorated paint? If no, does deteriorated surfaces exceed two square feet and/or more than 10% of a component?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Not Applicable		
4.10 Smoke Detectors	Is there a working smoke detector on each level? Do the smoke detectors meet the requirements of NFPA 74? In units occupied by the hearing impaired, is there an alarm system connected to the smoke detector?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Additional Comments: (Give Item Number)(Use an additional page if necessary)

Comments continued on a separate page Yes No

4. Supplemental for Other Rooms Used for Living and Halls For each numbered item, check one box only.

4.1 Room Location

----- right/left/center: the room is situated to the right, left, or center of the unit.
 ----- front/rear/center: the room is situated to the back, front or center of the unit.
 ----- floor level: the floor level on which the room is located.

Room Code

- 1 = Bedroom or Any Other Room Used for Sleeping (regardless of type of room)
- 2 = Dining Room or Dining Area
- 3 = Second Living Room, Family Room, Den, Playroom, TV Room
- 4 = Entrance Halls, Corridors, Halls, Staircases
- 5 = Additional Bathroom (also check presence of sink trap and clogged toilet)
- 6 = Other:

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date (mm/dd/yyyy) of final approval
		Yes, Pass	No, Fail	Inconclusive		
4.2	Electricity/Illumination If Room Code is a 1, are there at least two working outlets or one working outlet and one working, permanently installed light fixture? If Room Code is not a 1, is there a means of illumination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4.3	Electrical Hazards Is the room free from electrical hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4.4	Security Are all windows and doors that are accessible from the outside lockable?	<input type="checkbox"/>	<input type="checkbox"/>			
4.5	Window Condition If Room Code is a 1, is there at least one window? And, regardless of Room Code, are all windows free of signs of severe deterioration or missing or broken-out panes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4.6	Ceiling Condition Is the ceiling sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
4.7	Wall Condition Are the walls sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
4.8	Floor Condition Is the floor sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
4.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If no, does deteriorated surfaces exceed two square feet and/or more than 10% of a component?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Not Applicable	
4.10	Smoke Detectors Is there a working smoke detector on each level? Do the smoke detectors meet the requirements of NFPA 74? In units occupied by the hearing impaired, is there an alarm system connected to the smoke detector?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Additional Comments: (Give Item Number)(Use an additional page if necessary)

Comments continued on a separate page Yes No

4. Supplemental for Other Rooms Used for Living and Halls For each numbered item, check one box only.

4.1 Room Location Room Code

_____ right/left/center: the room is situated to the right, left, or center of the unit. 1 = Bedroom or Any Other Room Used for Sleeping (regardless of type of room)

_____ front/rear/center: the room is situated to the back, front or center of the unit. 2 = Dining Room or Dining Area

_____ floor level: the floor level on which the room is located. 3 = Second Living Room, Family Room, Den, Playroom, TV Room

4 = Entrance Halls, Corridors, Halls, Staircases

5 = Additional Bathroom (also check presence of sink trap and clogged toilet)

6 = Other:

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date (mm/dd/yyyy) of final approval
		Yes, Pass	No, Fail	Inconclusive		
4.2 Electricity/Illumination	If Room Code is a 1, are there at least two working outlets or one working outlet and one working, permanently installed light fixture? If Room Code is not a 1, is there a means of illumination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4.3 Electrical Hazards	Is the room free from electrical hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4.4 Security	Are all windows and doors that are accessible from the outside lockable?	<input type="checkbox"/>	<input type="checkbox"/>			
4.5 Window Condition	If Room Code is a 1, is there at least one window? And, regardless of Room Code, are all windows free of signs of severe deterioration or missing or broken-out panes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4.6 Ceiling Condition	Is the ceiling sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
4.7 Wall Condition	Are the walls sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
4.8 Floor Condition	Is the floor sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
4.9 Lead-Based Paint	Are all painted surfaces free of deteriorated paint? If no, does deteriorated surfaces exceed two square feet and/or more than 10% of a component?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Not Applicable	
4.10 Smoke Detectors	Is there a working smoke detector on each level? Do the smoke detectors meet the requirements of NFPA 74? In units occupied by the hearing impaired, is there an alarm system connected to the smoke detector?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Additional Comments: (Give Item Number)(Use an additional page if necessary)

Comments continued on a separate page Yes No

5. All Secondary Rooms (Rooms not used for living)

5. Secondary Rooms (Rooms not used for living)

If any room in the unit did not meet the requirements for "other room used for living" in Part 4, it is to be considered a "secondary room (not used for living)." Rate all of these rooms together (i.e., a single Part 5 checklist for all secondary rooms in the unit).

Inspection is required of the following two items since hazardous defects under these items could jeopardize the rest of the unit, even if present in rooms not used for living: 5.2 Security, 5.3 Electrical Hazards. Also, be observant of any other potentially hazardous features in these rooms and record under 5.4

5.1 None

If there are no "Secondary Rooms (rooms not used for living)," check "None" and go on to Part 6.

5.2 - 5.4 Explanations of these items is the same as those provided for "Living Room"

Additional Note

In recording "other potentially hazardous features," note (in the space provided) the means of access to the room with the hazard and check the box under "Inconclusive." Discuss the hazard with the HA inspection supervisor to determine "Pass" or "Fail." Include defects like: large holes in floor, walls or ceilings; evidence of structural collapse; windows in condition of severe deterioration; and deteriorated paint surfaces.

6. Building Exterior

6.1 Condition of Foundation

"Unsound or hazardous" means foundations with severe structural defects indicating the potential for structural collapse; or foundations that allow significant entry of ground water (for example, evidenced by flooding of basement).

6.2 Condition of Stairs, Rails, and Porches

"Unsound or hazardous" means: stairs, porches, balconies, or decks with severe structural defects; broken, rotting, or missing steps; absence of a handrail when there are extended lengths of steps (generally four or more consecutive steps); absence of or insecure railings around a porch or balcony which is approximately 30 inches or more above the ground.

6.3 Condition of Roof and Gutters

"Unsound and hazardous" means: The roof has serious defects such as serious buckling or sagging, indicating the potential of structural collapse; large holes or other defects that would result in significant air or water infiltration (in most cases severe exterior defects will be reflected in equally serious surface defects within the unit, e.g., buckling, water damage). The gutters, downspouts and soffits (area under the eaves) show serious decay and have allowed the entry of significant air or water into the interior of the structure. Gutters and downspouts are, however, not required to pass. If the roof is not observable and there is no sign of interior water damage, check "Pass."

6.4 Condition of Exterior Surfaces

See definition above for roof, item 6.3.

6.5 Condition of Chimney

The chimney should not be seriously leaning or showing evidence of significant disintegration (i.e., many missing bricks).

6.6 Lead-Based Paint: Exterior Surfaces

Housing Choice Voucher Units If the unit was built January 1, 1978 or after, no child under age six will occupy or currently occupies, is a 0-BR, elderly or handicapped unit with no children under age six on the lease or expected, has been certified lead-based paint free by a certified lead-based paint inspector (no lead-based paint present or no lead-based paint present after removal of lead), check NA and do not inspect painted surfaces. Visual assessment for deteriorated paint applies to all exterior painted surfaces (building components) associated with the assisted unit including windows, window sills, exterior walls, floors, porches, railings, doors, decks, stairs, play areas, garages, fences or other areas if frequented by children under age six. All deteriorated paint surfaces **more than 20 sq. ft. on exterior surfaces** must be stabilized (corrected) in accordance with all safe work practice requirements. **If the painted surface is less than 20 sq. ft., only stabilization is required. Clearance testing is not required.** Stabilization means removal of deteriorated paint, repair of the substrate, and application of a new protective coating or paint. Lead-Based Paint Owner Certification is required following stabilization activities except for *de minimis* level repairs.

6.7 Manufactured Homes: Tie Downs

Manufactured homes must be placed on a site in a stable manner and be free from hazards such as sliding and wind damage. Manufactured homes must be securely anchored by a tiedown device which distributes and transfers the loads imposed by the unit to appropriate ground anchors so as to resist wind overturning and sliding, unless a variation has been approved by the HUD Field Office.

5. All Secondary Rooms (Rooms not used for living) For each numbered item, check one box only.

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date (mm/dd/yyyy) of final approval
		Yes, Pass	No, Fail	Inconclusive		
5.1	None <input type="checkbox"/> Go to Part 6					
5.2	Security Are all windows and doors that are accessible from the outside lockable?	<input type="checkbox"/>	<input type="checkbox"/>			
5.3	Electrical Hazards Are all these rooms free from electrical hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
5.4	Other Potentially Hazardous Features Are all of these rooms free of any other potentially hazardous features? For each room with an "other potentially hazardous feature," explain the hazard and the means of control of interior access to the room.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
6.0 Building Exterior						
6.1	Condition of Foundation Is the foundation sound and free from hazards?	<input type="checkbox"/>	<input type="checkbox"/>			
6.2	Condition of Stairs, Rails, and Porches Are all the exterior stairs, rails, and porches sound and free from hazards?	<input type="checkbox"/>	<input type="checkbox"/>			
6.3	Condition of Roof and Gutters Are the roof, gutters, and downspouts sound and free from hazards?	<input type="checkbox"/>	<input type="checkbox"/>			
6.4	Condition of Exterior Surfaces Are exterior surfaces sound and free from hazards?	<input type="checkbox"/>	<input type="checkbox"/>			
6.5	Condition of Chimney Is the chimney sound and free from hazards?	<input type="checkbox"/>	<input type="checkbox"/>			
6.6	Lead-Based Paint: Exterior Surfaces Are all painted surfaces free of deteriorated paint? If no, does deteriorated surfaces exceed 20 sq. ft. of total exterior surface area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Not Applicable	
6.7	Manufactured Homes: Tie Downs If the unit is a manufactured home, is it properly placed and tied down? If not a manufactured home, check "Not Applicable."	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Not Applicable	

Additional Comments: (Give Item Number)(Use an additional page if necessary)

Comments continued on a separate page Yes No

7. Heating and Plumbing

7.1 Adequacy of Heating Equipment

"Adequate heat" means that the heating system is capable of delivering enough heat to assure a healthy environment in the unit (appropriate to the climate). The HA is responsible for defining what constitutes a healthy living environment in the area of the country in which it operates. Local codes (city or state codes) should be instructive in arriving at a reasonable local definition. For example, for heat adequacy, local codes often require that the unit's heating facility be capable of maintaining a given temperature level during a designated time period. Portable electric room heaters or kitchen stoves or ranges with a built-in heat unit are not acceptable as a primary source of heat for units located in areas where climate conditions require regular heating.

"Directly or indirectly to all rooms used for living" means:

"directly" means that each room used for living has a heat source (e.g., working radiator; working hot air register; baseboard heat)

"indirectly" means that, if there is no heat source present in the room, heat can enter the room easily from a heated adjacent room (e.g. a dining room may not have a radiator, but would receive heat from the heated living room through a large open archway).

If the heating system in the unit works, but there is some question whether a room without a heat source would receive adequate indirect heat, check "Inconclusive" and verify adequacy from tenant or owner (e.g., unheated bedroom at the end of a long hallway).

How to determine the capability of the heating system: If the unit is occupied, usually the quickest way to determine the capability of the heating system over time is to question the tenant. If the unit is not occupied, or the tenant has not lived in the unit during the months when heat would be needed, check "Inclusive." It will be necessary to question the owner on this point after the inspection has been completed and, if possible, to question other tenants (if it is a multi-unit structure) about the adequacy of heat provided. Under some circumstances, the adequacy of heat can be determined by a simple comparison of the size of the heating system to the area to be heated. For example, a small permanently installed space heater in a living room is probably inadequate for heating anything larger than a relatively small apartment.

7.2 Safety of Heating Equipment

Examples of "unvented fuel burning space heaters" are: portable kerosene units; unvented open flame portable units.

"Other unsafe conditions" include: breakage or damage to heating system such that there is a potential for fire or other threats to safety; improper connection of flues allowing exhaust gases to enter the living area; improper installation of equipment (e.g., proximity of fuel tank to heat source, absence of safety devices); indications of improper use of equipment (e.g., evidence of heavy build-up of soot, creosote, or other substance in the chimney); disintegrating equipment; combustible materials near heat source or flue. See Inspection Manual for a more detailed discussion of the inspection of safety aspects of the heating systems.

If you are unable to gain access to the primary heating system in the unit check "Inconclusive." Contact the owner or manager for verification of safety of the system. If the system has passed a recent local inspection, check "Pass." This applies especially to units in which heat is provided by a large scale, complex central heating system that serves multiple units (e.g., a boiler in the basement of a large apartment building). In most cases, a large scale heating system for a multi-unit building will be subject to periodic safety inspections by a local public agency. Check with the owner or manager to determine the date and outcome of the last such inspection, or look for an inspection certificate posted on the heating system.

7.3 Ventilation and Adequacy of Cooling

If the tenant is present and has occupied the unit during the summer months, inquire about the adequacy of air flow. If the tenant is not present or has not occupied the unit during the summer months, test a sample of windows to see that they open (see Inspection Manual for instruction).

"Working cooling equipment" includes: central (fan) ventilation system; evaporative cooling system; room or central air conditioning.

Check "Inconclusive" if there are no openable windows and it is impossible, or inappropriate, to test whether a cooling system works. Check with other tenants in the building (in a multi-unit structure) and with the owner or manager for verification of the adequacy of ventilation and cooling.

7.4 Water Heater

"Location presents hazard" means that the gas or oil water heater is located in living areas or closets where safety hazards may exist (e.g., water heater located in very cluttered closet with cloth and paper items stacked against it). Gas water heaters in bedrooms or other living areas must have safety dividers or shields.

Water heaters must have a temperature-pressure relief valve and discharge line (directed toward the floor or outside of the living area) as a safeguard against build up of steam if the water heater malfunctions. If not, they are not properly equipped and shall fail.

To pass, gas or oil fired water heaters must be vented into a properly installed chimney or flue leading outside. Electric water heaters do not require venting.

If it is impossible to view the water heater, check "Inconclusive." Obtain verification of safety of system from owner or manager.

Check "Pass" if the water heater has passed a local inspection. This applies primarily to hot water that is supplied by a large scale complex water heating system that serves multiple units (e.g., water heating system in large apartment building). Check in the same manner described for heating system safety, item 7.2, above.

7.5 Water Supply

If the structure is connected to a city or town water system, check "Pass." If the structure has a private water supply (usually in rural areas) inquire into the nature of the supply (probably from the owner) and whether it is approvable by an appropriate public agency.

General note: If items 7.5, 7.6, or 7.7 are checked "Inconclusive," check with owner or manager for verification of adequacy.

7.6 Plumbing

"Major leaks" means that main water drain and feed pipes (often located in the basement) are seriously leaking. (Leaks present at specific facilities have already been evaluated under the checklist items for "Bathroom" and "Kitchen.")

"Corrosion" (causing serious and persistent levels of rust or contamination in the drinking water) can be determined by observing the color of the drinking water at several taps. Badly corroded pipes will produce noticeably brownish water. If the tenant is currently occupying the unit, he or she should be able to provide information about the persistence of this condition. (Make sure that the "rusty water" is not a temporary condition caused by city or town maintenance of main water lines.) See general note under 7.5.

7.7 Sewer Connection

If the structure is connected to the city or town sewer system, check "Pass." If the structure has its own private disposal system (e.g., septic field), inquire into the nature of the system and determine whether this type of system can meet appropriate health and safety regulations.

The following conditions constitute "evidence of sewer back up": strong sewer gas smell in the basement or outside of unit; numerous clogged or very slow drains; marshy areas outside of unit above septic field. See general note under 7.5.

7. Heating and Plumbing

For each numbered item, check one box only.

Item No.	Description	Decision			If Fail, what repairs are necessary? If inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date (mm/dd/yyyy) of final approval
		Yes, Pass	No, Fail	Inconclusive		
7.1 Adequacy of Heating Equipment	Is the heating equipment capable of providing adequate heat (either directly or indirectly) to all rooms used for living?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
7.2 Safety of Heating Equipment	Is the unit free from unvented fuel burning space heaters or any other types of unsafe heating conditions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
7.3 Ventilation and Adequacy of Cooling	Does the unit have adequate ventilation and cooling by means of openable windows or a working cooling system?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
7.4 Water Heater	Is the water heater located, equipped, and installed in a safe manner?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
7.5 Water Supply	Is the unit served by an approvable public or private sanitary water supply?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
7.6 Plumbing	Is plumbing free from major leaks or corrosion that causes serious and persistent levels of rust or contamination of the drinking water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
7.7 Sewer Connection	Is plumbing connected to an approvable public or private disposal system, and is it free from sewer back-up?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Additional Comments: (Give Item Number)

Comments continued on a separate page Yes No

8. General Health and Safety

8.1 Access to Unit

"Through another unit" means that access to the unit is only possible by means of passage through another dwelling unit.

8.2 Exits

"Acceptable fire exit" means that the building must have an alternative means of exit that meets local or State regulations in case of fire; this could include:

An openable window if the unit is on the first floor or second floor or easily accessible to the ground.

A back door opening on to a porch with a stairway leading to the ground.

Fire escape, fire ladder, or fire stairs.

"Blocked" means that the exit is not useable due to conditions such as debris, storage, door or window nailed shut, broken lock.

Important note: The HA has the final responsibility for deciding whether the type of emergency exit is acceptable, although the tenant should assist in making the decision.

8.3 Evidence of Infestation

"Presence of rats, or severe infestation by mice or vermin" (such as roaches) is evidenced by: rat holes; droppings; rat runs; numerous settings of rat poison. If the unit is occupied, ask the tenant,

8.4 Garbage and Debris

"Heavy accumulation" means large piles of trash and garbage, discarded furniture, and other debris (not temporarily stored awaiting removal) that might harbor rodents. This may occur inside the unit, in common areas, or outside. It usually means a level of accumulation beyond the capacity of an individual to pick up within an hour or two.

8.5 Refuse Disposal

"Adequate covered facilities" includes: trash cans with covers, garbage chutes, "dumpsters" (i.e., large scale refuse boxes with lids); trash bags (if approvable by local public agency). "Approvable by local public agency" means that the local Health and Sanitation Department (city, town or county) approves the type of facility in use. Note: During the period when the HA is setting up its inspection program, it will check with the local health and sanitation department to determine which types of facilities are acceptable and include this in the inspection requirements.

If the unit is vacant and there are no adequate covered facilities present, check "Inconclusive." Contact the owner or manager for verification of facilities provided when the unit is occupied.

8.6 Interior Stairs and Common Halls

"Loose, broken, or missing steps" should fail if they present a serious risk of tripping or falling.

A handrail is required on extended sections of stairs (generally four or more consecutive steps). A railing is required on unprotected heights such as around stairwells.

"Other hazards" would be conditions such as bare electrical wires and tripping hazards.

Housing Choice Voucher Units If the unit was built January 1, 1978, or after, no child under six will occupy or currently occupies it, is a 0-BR, elderly or handicapped unit with no children under six on the lease or expected, has been certified lead-based paint free by a certified lead-based paint inspector (no lead-based paint present or no lead-based paint present after removal of lead-based paint.), check NA and do not inspect painted surfaces.

This requirement applies to all painted surfaces (building components) within the unit. (Do not include tenant belongings). Surfaces to receive a visual assessment for deteriorated paint include walls, floors, ceilings, built in cabinets (sink bases), baseboards, doors, door frames, windows systems including

mullions, sills, or frames and any other painted building component within the unit. Deteriorated paint includes any painted surface that is peeling, chipping, chalking, cracking, damaged or otherwise separated from the substrate.

All deteriorated paint surfaces **more than 2 sq. ft. in any one interior room or space, or more than 10% of the total surface area of an interior type of component with a small surface area (i.e., window sills, baseboards, and trim)** must be stabilized (corrected) in accordance with all safe work practice requirements and clearance is required. **If the deteriorated painted surface is less than 2 sq. ft. or less than 10% of the component, only stabilization is required. Clearance testing is not required.** Stabilization means removal of deteriorated paint, repair of the substrate, and application of a new protective coating or paint. Lead-Based Paint Owner Certification is required following stabilization activities, except for *de minimis level* repairs.

8.7 Other Interior Hazards

Examples of other hazards might be: a broken bathroom fixture with a sharp edge in a location where it represents a hazard; a protruding nail in a doorway.

8.8 Elevators

Note: At the time the HA is setting up its inspection program, it will determine local licensing practices for elevators. Inspectors should then be aware of these practices in evaluating this item (e.g., check inspection date). If no elevator check "Not Applicable."

8.9 Interior Air Quality

If the inspector has any questions about whether an existing poor air quality condition should be considered dangerous, he or she should check with the local Health and Safety Department (city, town or county).

8.10 Site and Neighborhood Conditions

Examples of conditions that would "seriously and continuously endanger the health or safety of the residents" are:

- other buildings on, or near the property, that pose serious hazards (e.g., dilapidated shed or garage with potential for structural collapse),
- evidence of flooding or major drainage problems,
- evidence of mud slides or large land settlement or collapse,
- proximity to open sewage,
- unprotected heights (cliffs, quarries, mines, sandpits),
- fire hazards,
- abnormal air pollution or smoke which continues throughout the year and is determined to seriously endanger health, and
- continuous or excessive vibration of vehicular traffic (if the unit is occupied, ask the tenant).

8.11 Lead-Based Paint: Owner Certification

If the owner is required to correct any lead-based paint hazards at the property including deteriorated paint or other hazards identified by a visual assessor, a certified lead-based paint risk assessor, or certified lead-based paint inspector, the PHA must obtain certification that the work has been done in accordance with all applicable requirements of 24 CFR Part 35. The Lead-Based Paint Owner Certification must be received by the PHA before the execution of the HAP contract or within the time period stated by the PHA in the owner HQS violation notice. Receipt of the completed and signed Lead-Based Paint Owner Certification signifies that all HQS lead-based paint requirements have been met and no re-inspection by the HQS inspector is required.

8. General Health and Safety

For each numbered item, check one box only.

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date (mm/dd/yyyy) of final approval
		Yes, Pass	No, Fail	Inconclusive		
8.1 Access to Unit	Can the unit be entered without having to go through another unit?	<input type="checkbox"/>	<input type="checkbox"/>			
8.2 Exits	Is there an acceptable fire exit from this building that is not blocked?	<input type="checkbox"/>	<input type="checkbox"/>			
8.3 Evidence of Infestation	Is the unit free from rats or severe infestation by mice or vermin?	<input type="checkbox"/>	<input type="checkbox"/>			
8.4 Garbage and Debris	Is the unit free from heavy accumulation of garbage or debris inside and outside?	<input type="checkbox"/>	<input type="checkbox"/>			
8.5 Refuse Disposal	Are there adequate covered facilities for temporary storage and disposal of food wastes, and are they approvable by a local agency?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
8.6 Interior Stairs and Common Halls	Are interior stairs and common halls free from hazards to the occupant because of loose, broken, or missing steps on stairways; absent or insecure railings; inadequate lighting; or other hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
8.7 Other Interior Hazards	Is the interior of the unit free from any other hazard not specifically identified previously?	<input type="checkbox"/>	<input type="checkbox"/>			
8.8 Elevators	Where local practice requires, do all elevators have a current inspection certificate? If local practice does not require this, are they working and safe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Not Applicable	
8.9 Interior Air Quality	Is the unit free from abnormally high levels of air pollution from vehicular exhaust, sewer gas, fuel gas, dust, or other pollutants?	<input type="checkbox"/>	<input type="checkbox"/>			
8.10 Site and Neighborhood Conditions	Are the site and immediate neighborhood free from conditions which would seriously and continuously endanger the health or safety of the residents?	<input type="checkbox"/>	<input type="checkbox"/>			
8.11 Lead-Based Paint: Owner Certification	If the owner of the unit is required to correct any deteriorated paint or lead-based paint hazards at the property, has the Lead-Based Paint Owner's Certification been completed, and received by the PHA? If the owner was not required to correct any deteriorated paint or lead-based paint hazards, check NA.	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Not Applicable	

Additional Comments: (Give Item Number)

Comments continued on a separate page Yes No

Special Amenities (Optional)

This Section is for optional use of the HA. It is designed to collect additional information about other positive features of the unit that may be present. Although the features listed below are not included in the Housing Quality Standards, the tenant and HA may wish to take them into consideration in decisions about renting the unit and the reasonableness of the rent. Check/list any positive features found in relation to the unit.

1. Living Room

- High quality floors or wall coverings
- Working fireplace or stove
- Balcony, patio, deck, porch
- Special windows or doors
- Exceptional size relative to needs of family
- Other: (Specify)

2. Kitchen

- Dishwasher
- Separate freezer
- Garbage disposal
- Eating counter/breakfast nook
- Pantry or abundant shelving or cabinets
- Double oven/self cleaning oven, microwave
- Double sink
- High quality cabinets
- Abundant counter-top space
- Modern appliance(s)
- Exceptional size relative to needs of family
- Other: (Specify)

3. Other Rooms Used for Living

- High quality floors or wall coverings
- Working fireplace or stove
- Balcony, patio, deck, porch
- Special windows or doors
- Exceptional size relative to needs of family
- Other: (Specify)

4. Bath

- Special feature shower head
- Built-in heat lamp
- Large mirrors
- Glass door on shower/tub
- Separate dressing room
- Double sink or special lavatory
- Exceptional size relative to needs of family
- Other: (Specify)

5. Overall Characteristics

- Storm windows and doors
- Other forms of weatherization (e.g., insulation, weather stripping)
- Screen doors or windows
- Good upkeep of grounds (i.e., site cleanliness, landscaping, condition of lawn)
- Garage or parking facilities
- Driveway
- Large yard
- Good maintenance of building exterior
- Other: (Specify)

6. Disabled Accessibility

Unit is accessible to a particular disability. Yes No
Disability _____

D. Questions to ask the Tenant (Optional)

1. Does the owner make repairs when asked? Yes No
2. How many people live there? _____
3. How much money do you pay to the owner/agent for rent? \$ _____
4. Do you pay for anything else? (specify) _____
5. Who owns the range and refrigerator? (insert O = Owner or T = Tenant) Range _____ Refrigerator _____ Microwave _____
6. Is there anything else you want to tell us? (specify) _____

Inspection Summary (Optional)

Provide a summary description of each item which resulted in a rating of **Fail** or **Pass with Comments**.

Tenant ID No.	Inspector	Date of Inspection	Address of Inspected Unit
Type of Inspection	<input type="checkbox"/> Initial <input type="checkbox"/> Special <input type="checkbox"/> Reinspection		
Item Number	Reason for "Fail" or "Pass with Comments" Rating		

Comments continued on a separate page Yes No

Voucher
Housing Choice Voucher Program

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB No. 2577-0169
(exp. 9/30/2002)

Public Reporting Burden for this collection of information is estimated to average .05 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This collection of information is authorized under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). The information is used to authorize a family to look for an eligible unit and specifies the size of the unit. The information also sets forth the family's obligations under the Housing Choice Voucher Program.

Please read entire document before completing form Fill in all blanks below. Type or print clearly.		Voucher Number
1. Insert unit size in number of bedrooms. (This is the number of bedrooms for which the Family qualifies, and is used in determining the amount of assistance to be paid on behalf of the Family to the owner.)		1. Unit Size
2. Date Voucher Issued (mm/dd/yyyy) Insert actual date the Voucher is issued to the Family.		2. Issue Date (mm/dd/yyyy)
3. Date Voucher Expires (mm/dd/yyyy) Insert date sixty days after date Voucher is issued. (See Section 6 of this form.)		3. Expiration Date (mm/dd/yyyy)
4. Date Extension Expires (if applicable)(mm/dd/yyyy) (See Section 6. of this form)		4. Date Extension Expires (mm/dd/yyyy)
5. Name of Family Representative	6. Signature of Family Representative	Date Signed (mm/dd/yyyy)
7. Name of Public Housing Agency (PHA)		
8. Name and Title of PHA Official	9. Signature of PHA Official	Date Signed (mm/dd/yyyy)

1. Housing Choice Voucher Program

- A. The public housing agency (PHA) has determined that the above named family (item 5) is eligible to participate in the housing choice voucher program. Under this program, the family chooses a decent, safe and sanitary unit to live in. If the owner agrees to lease the unit to the family under the housing choice voucher program, and if the PHA approves the unit, the PHA will enter into a housing assistance payments (HAP) contract with the owner to make monthly payments to the owner to help the family pay the rent.
- B. The PHA determines the amount of the monthly housing assistance payment to be paid to the owner. Generally, the monthly housing assistance payment by the PHA is the difference between the applicable payment standard and 30 percent of monthly adjusted family income. In determining the maximum initial housing assistance payment for the family, the PHA will use the payment standard in effect on the date the tenancy is approved by the PHA. The family may choose to rent a unit for more than the payment standard, but this choice does not change the amount of the PHA's assistance payment. The actual amount of the PHA's assistance payment will be determined using the gross rent for the unit selected by the family.

2. Voucher

- A. When issuing this voucher the PHA expects that if the family finds an approvable unit, the PHA will have the money available to enter into a HAP contract with the owner. However, the PHA is under no obligation to the family, to any owner, or to any other person, to approve a tenancy. The PHA does not have any liability to any party by the issuance of this voucher.

- B. The voucher does not give the family any right to participate in the PHA's housing choice voucher program. The family becomes a participant in the PHA's housing choice voucher program when the HAP contract between the PHA and the owner takes effect.
- C. During the initial or any extended term of this voucher, the PHA may require the family to report progress in leasing a unit at such intervals and times as determined by the PHA.

3. PHA Approval or Disapproval of Unit or Lease

- A. When the family finds a suitable unit where the owner is willing to participate in the program, the family must give the PHA the request for tenancy approval (on the form supplied by the PHA), signed by the owner and the family, and a copy of the lease, including the HUD-prescribed tenancy addendum. **Note: Both documents must be given to the PHA no later than the expiration date stated in item 3 or 4 on top of page one of this voucher.**
- B. The family must submit these documents in the manner that is required by the PHA. PHA policy may prohibit the family from submitting more than one request for tenancy approval at a time.
- C. The lease must include, word-for-word, all provisions of the tenancy addendum required by HUD and supplied by the PHA. This is done by adding the HUD tenancy addendum to the lease used by the owner. If there is a difference between any provisions of the HUD tenancy addendum and any provisions of the owner's lease, the provisions of the HUD tenancy addendum shall control.

- D. After receiving the request for tenancy approval and a copy of the lease, the PHA will inspect the unit. The PHA may not give approval for the family to lease the unit or execute the HAP contract until the PHA has determined that all the following program requirements are met: the unit is eligible; the unit has been inspected by the PHA and passes the housing quality standards (HQS); the rent is reasonable; and the landlord and tenant have executed the lease including the HUD-prescribed tenancy addendum.
- E. If the PHA approves the unit, the PHA will notify the family and the owner, and will furnish two copies of the HAP contract to the owner.
 - 1. The owner and the family must execute the lease.
 - 2. The owner must sign both copies of the HAP contract and must furnish to the PHA a copy of the executed lease and both copies of the executed HAP contract.
 - 3. The PHA will execute the HAP contract and return an executed copy to the owner.
- F. If the PHA determines that the unit or lease cannot be approved for any reason, the PHA will notify the owner and the family that:
 - 1. The proposed unit or lease is disapproved for specified reasons, and
 - 2. If the conditions requiring disapproval are remedied to the satisfaction of the PHA on or before the date specified by the PHA, the unit or lease will be approved.

4. Obligations of the Family

- A. When the family's unit is approved and the HAP contract is executed, the family must follow the rules listed below in order to continue participating in the housing choice voucher program.
- B. The family must:
 - 1. Supply any information that the PHA or HUD determines to be necessary including evidence of citizenship or eligible immigration status, and information for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
 - 2. Disclose and verify social security numbers and sign and submit consent forms for obtaining information.
 - 3. Supply any information requested by the PHA to verify that the family is living in the unit or information related to family absence from the unit.
 - 4. Promptly notify the PHA in writing when the family is away from the unit for an extended period of time in accordance with PHA policies.
 - 5. Allow the PHA to inspect the unit at reasonable times and after reasonable notice.
 - 6. Notify the PHA and the owner in writing before moving out of the unit or terminating the lease.
 - 7. Use the assisted unit for residence by the family. The unit must be the family's only residence.
 - 8. Promptly notify the PHA in writing of the birth, adoption, or court-awarded custody of a child.
 - 9. Request PHA written approval to add any other family member as an occupant of the unit.

- 10. Promptly notify the PHA in writing if any family member no longer lives in the unit.
 - 11. Give the PHA a copy of any owner eviction notice.
 - 12. Pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease.
- C. Any information the family supplies must be true and complete.
 - D. The family (including each family member) must not:
 - 1. Own or have any interest in the unit (other than in a cooperative, or the owner of a manufactured home leasing a manufactured home space).
 - 2. Commit any serious or repeated violation of the lease.
 - 3. Commit fraud, bribery or any other corrupt or criminal act in connection with the program.
 - 4. Engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.
 - 5. Sublease or let the unit or assign the lease or transfer the unit.
 - 6. Receive housing choice voucher program housing assistance while receiving another housing subsidy, for the same unit or a different unit under any other Federal, State or local housing assistance program.
 - 7. Damage the unit or premises (other than damage from ordinary wear and tear) or permit any guest to damage the unit or premises.
 - 8. Receive housing choice voucher program housing assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.
 - 9. Engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises.

5. Illegal Discrimination

If the family has reason to believe that, in its search for suitable housing, it has been discriminated against on the basis of age, race, color, religion, sex, disability, national origin, or familial status, the family may file a housing discrimination complaint with any HUD Field Office in person, by mail, or by telephone. The PHA will give the family information on how to fill out and file a complaint.

6. Expiration and Extension of Voucher

The voucher will expire on the date stated in item 3 on the top of page one of this voucher unless the family requests an extension in writing and the PHA grants a written extension of the voucher in which case the voucher will expire on the date stated in item 4. At its discretion, the PHA may grant a family's request for one or more extensions of the initial term.

Family Portability Information
Section 8 Tenant-Based Assistance
Rental Certificate/Rental Voucher Program

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 9/30/2002)

Public reporting burden for this collection of information is estimated to average .50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This collection of information is authorized under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). The information is used to standardize the information submitted to the receiving Housing Authority (HA) by the initial HA. In addition, the information is used for monthly billing by the receiving HA.

Sensitive Information. The information collected on this form is considered sensitive and is protected by the Privacy Act. The Privacy Act requires that these records be maintained with appropriate administrative, technical, and physical safeguards to ensure their security and confidentiality. In addition, these records should be protected against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained.

Part I Initial HA Information and Certification

Instructions: This portion of the form is to be completed by the initial HA for a family that is moving out of the initial HA's jurisdiction under the portability procedures.

1. Head of Household Name			2. Head of Household Social Security Number				
3. Form of Assistance <input type="checkbox"/> Certificate <input type="checkbox"/> Voucher		4. Certificate/Voucher Number	5. Bedroom Size	6. Issuance Date (mm/dd/yyyy)	7. Expiration Date (mm/dd/yyyy)	8. Date of Last Income Examination (mm/dd/yyyy)	

9. Annual income if new admission (not currently a Section 8 certificate or voucher participant) \$ _____

10. Date by which initial billing must be received (six months from date initial HA issued certificate/voucher)(mm/dd/yyyy) _____

11. 80% of initial HA ongoing administrative fee (calculated using the monthly per unit fee amount for Column A from the *Federal Register* Annual Factors for determining HA administrative fees) \$ _____

Attachments:

- a. A copy of the certificate/voucher issued by the initial HA.
- b. **A copy of the current form HUD-50058 and copies of the income verification for the current form HUD-50058.** (Note: This is the latest form HUD-50058 completed for either an admission, an annual reexamination, or an interim redetermination. It is not the form HUD-50058 that the initial HA completes to report the portability move-out.)

Certification Statement:

The family is a current program participant or is not a current program participant but is income-eligible in the receiving HA's jurisdiction (see line 9 above), and the certificate or voucher was issued in accordance with the program regulations. Please issue the family a receiving HA voucher or certificate that does not expire before the expiration date indicated in Item 7 (the expiration date on the initial HA's certificate/voucher) for the appropriate bedroom size (based on the receiving HA's policies). I certify that the information contained on Part I of this form and the attached documents provided by my agency is true and correct. My agency will promptly reimburse amounts paid on behalf of the above family in accordance with program rules and regulations.

Name of Certifying HA Official _____ Type full Name and Address of Initial HA below

Signature _____

Initial HA Contact Name _____

Phone Number _____

Form Submission Date (mm/dd/yyyy) _____

Part II-A Receiving HA Information and Certification

Instructions: The receiving HA must always complete Part II-A.

1. Head of Household Name _____		2. Head of Household Social Security Number _____
3. Certificate/Voucher Bedroom Size (per receiving HA's policies) _____	4. HAP Contract Number (if applicable) _____	

Certification Statement:

I certify that the information contained on Part II of this form and, if applicable, the attached form HUD-50058 is true and correct and that my agency will promptly remit any overpayment to your agency.

Name of Certifying HA Official _____ Type full Name and Address of Receiving HA below

Signature _____

Receiving HA Contact Name _____

Phone Number _____

Form Submission Date (mm/dd/yyyy) _____

Part II-B Family Status, Initial HAP Contract Execution and Billing Changes After HAP Contract Execution

Instructions: Part II-B must be completed and mailed by the receiving HA within 10 working days from the date a HAP contract is executed on behalf of the family, or from the effective date of the change in the family status or billing amount. **The receiving HA does not submit the billing form each month unless the monthly amount due changes or both HAs agree to a different billing schedule that requires a more frequent billing submittal.**

Check each statement below that applies:

- 1. The above family has failed to submit a request for lease approval for an eligible unit within the allotted time period. You may therefore reissue your voucher or certificate to another family and, if applicable, modify any records concerning local preference usage.
Do not complete remainder of form.
- 2. We have executed a HAP contract on behalf of the family and are absorbing the family into our own program effective _____(mm/dd/yyyy). You may reissue your certificate or voucher to another family. Do not complete remainder of form.
- 3. We executed a HAP contract effective _____(mm/dd/yyyy) on behalf of the family and are billing your agency. **A copy of the new form HUD-50058 is attached to this form. No other documentation is required. (Receiving HAs are required to complete and submit a form HUD-50058 for families moving into their jurisdiction under portability. The receiving HA may elect to conduct a special recertification of the family to conform the dates of the unit inspection and recertification, but is not required to do so by HUD in order to complete the form HUD-50058 for a portability move-in.)**
Go to line 9 below.
- 4. The HAP amount has changed effective _____(mm/dd/yyyy) for the family because of: (Check all applicable items. **A current copy of the form HUD-50058 must be attached to this form. No other documentation is required.**)
Go to line 9 below.
 - ___ annual recertification
 - ___ interim/special recertification
 - ___ rent increase to owner (certificate program only)
 - ___ change in payment standard (voucher program only)
 - ___ the family moved to another unit in the receiving HA jurisdiction.
 - ___ other:(specify)

Comments continued on separate page Yes No

5. The HAP payments: (Check one)
 ___ have been temporarily abated effective _____ (mm/dd/yyyy).
 Please suspend the HAP to owner portion from your payment effective _____ (mm/dd/yyyy) until further notice.
 ___ that were abated beginning _____ (mm/dd/yyyy) have been resumed
 effective _____ (mm/dd/yyyy).

6. We are terminating the family from the program and will no longer be billing your agency.
 Effective date of termination: _____ (mm/dd/yyyy)
 Reason for termination:(specify)

7. The HAP contract has been terminated effective _____ (mm/dd/yyyy) and no new HAP contract has yet been
 executed on behalf of the family.
 The family:
 ___ will not be remaining in our jurisdiction and has been referred to your agency.
 ___ intends to remain in our jurisdiction. The family's voucher/certificate expires _____ (mm/dd/yyyy).

8. We have paid a damage/vacancy loss claim for the family.

9. Billing Information

Regular Monthly Billing Amount

- a. Monthly HAP to owner _____
 (line 21g or line 22n of form HUD-50058)
- b. 80% of initial HA ongoing admin fee _____
 (line 11 of Part I of this form)
- c. Monthly utility reimbursement amount _____
 (line 21f, if checked, or line 22p of form HUD-50058)
- d. Total regular monthly billing amount (sum of lines a, b, and c) _____

Additional Amount Due, If Applicable

- e. Prorated HAP to owner from _____ to _____ _____
- f. Hard-to-house fee _____
- g. Damage/vacancy loss claim paid _____
- h. Other (explain) _____
- i. Total additional amount (sum of lines e, f, g and h) _____

Billing Amount

- j. Payment Due This Billing Submission (sum of lines d and i.) _____
 (After this submission, billing amount is amount recorded on line d, unless otherwise notified by the receiving HA.)

**Allowances for
Tenant-Furnished Utilities
and Other Services**

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 9/30/2002)

See Public Reporting Statement and Instructions on back

Locality		Unit Type					Date (mm/dd/yyyy)
Utility or Service		Monthly Dollar Allowances					
		0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
Heating	a. Natural Gas						
	b. Bottle Gas						
	c. Oil / Electric						
	d. Coal / Other						
Cooking	a. Natural Gas						
	b. Bottle Gas						
	c. Oil / Electric						
	d. Coal / Other						
Other Electric							
Air Conditioning							
Water Heating	a. Natural Gas						
	b. Bottle Gas						
	c. Oil / Electric						
	d. Coal / Other						
Water							
Sewer							
Trash Collection							
Range/Microwave							
Refrigerator							
Other -- specify							

Actual Family Allowances To be used by the family to compute allowance.
Complete below for the actual unit rented.

Name of Family

Address of Unit

Number of Bedrooms

Utility or Service	per month cost
Heating	\$
Cooking	
Other Electric	
Air Conditioning	
Water Heating	
Water	
Sewer	
Trash Collection	
Range/Microwave	
Refrigerator	
Other	
Total	\$

Previous editions are obsolete

form HUD-52667 (12/97)
ref. Handbook 7420.8

Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This collection of information is authorized under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). The information is used to establish a utility allowance schedule for all utilities and other services used to determine the family's monthly housing assistance payment and rental payment. HUD will use this information to ensure that the costs are reasonable.

Instructions for Form HUD-52667, Allowances For Tenant Furnished Utilities and Other Services

Form HUD-52667 shall be completed by a HA for each different type of unit as explained below. Each form shall be reproduced by the HA and given to families with their Certificate or Voucher or subsequently in connection with any revisions. The form will provide the family, while shopping for a unit, with the amount of the allowances for various types of units for rent. With these allowances the family can compare gross rents and fair market rents. Form HUD-52667 shall also be used by the HA to record the actual allowance for each family.

Level of Allowance: Utilities and other services are included in gross rent, and when they are not furnished by the owner, an allowance must be provided to the family. Allowances must be adequate for all utilities and services not provided by the owner that were included in the fair market rent. The utility allowance schedule is based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the HA must use normal patterns of consumption for the community as a whole and current utility rates. Allowances must not be based on energy consumption or costs above average or below average income families. The objective shall be to establish allowances based on actual rates and average consumption estimates and should allow the majority of participating families an allowance that is adequate to cover expected average utility costs and other services over a 12-month period.

Determining Allowances:

- a. In general, HAs shall use to the extent possible local sources of information on the cost of utilities and services. The following local sources should be contacted:
 - (1) Electric utility suppliers.
 - (2) Natural gas utility suppliers.
 - (3) Water and sewer suppliers.
 - (4) Fuel oil and bottle gas suppliers.
 - (5) Public service commissions.
 - (6) Real estate and property management firms.
 - (7) State and local agencies.
 - (8) Appliance sales or leasing firms.
- b. Recently adopted utility allowance schedules from neighboring HAs with essentially the same type of housing stock should also be examined. In most cases fuel or utilities rates normally will not vary appreciably in neighboring communities and where data is not available in small communities allowances for larger nearby communities may be used. Where local sources are inadequate, the HA may consult the national average consumption data provided in Table 1 and make appropriate adjustments to reflect local conditions.

- c. The HA must establish separate heating and cooling allowances for the various types of existing housing in the locality with the same number of bedrooms. Depending on local housing stock, utility allowances must be established for the following unit types: detached houses, duplexes, row or townhouses, garden and high rise apartments and manufactured homes. In addition to establishing different heating and cooling allowances for various types of structures, attention should be given to different allowances for water depending on whether families will have responsibilities for lawn care.
- d. The data to be solicited from the local sources shown above should be as close as possible in form and detail to the format of form HUD-52667. If possible, all consumption data should be obtained for each unit size and type. If data is available only for an average unit size (2.5 bedrooms), multiply the utilities costs for the average unit by the following factors:

Size of Unit	Factor
0-BR	0.5
1-BR	0.7
2-BR	0.9
3-BR	1.1
4-BR	1.4
5-BR	1.6

Example: Natural gas heating cost for average sized unit is \$18.00 per month. The allowance for a 4-bedroom unit will be $1.4 \times \$18.00 = \25.00 (rounded to nearest dollar).

Air Conditioning: Allowances for air conditioning must be established only for communities where the majority of units in the market provide centrally air conditioned units or appropriate wiring for tenant installed A/C units.

Ranges and Refrigerators: Allowances for ranges and refrigerators must be based on the lesser of the cost of leasing or installment purchasing of suitable equipment.

Utility Rate Schedules: The cost of gas and electricity varies according to amounts consumed as shown on the appropriate rate schedules. It is not possible to compute exactly the cost of electricity for any given function without knowing the total electrical usage for a unit. However, because neither the HA or the families know beforehand just what will be the combination of utilities for any unit rented, it will be necessary to approximate the allowances for each function (e.g., heating cooking, etc.) as follows:

For electricity the rates used for lighting, refrigeration and appliances (Table 1, Item I), should be from the top of the rate schedule or the higher unit costs. Allowances for electric cooking, water heating and space heating should be computed from the middle or lower steps in the rate schedules.

Similarly, allowances for gas used for water heating and cooking should be computed using rates from the top of the rate schedule and for heating from the lower steps.

Supporting Documentation: The HA shall maintain with the form HUD-52667 copies of all supporting documentation used in determining the allowances and any revisions. For instance, letters from local utility companies shall be attached plus any worksheets used by the HA in computing allowances. The material should contain, if possible, the quantities of the utilities that are the basis of the dollar allowances (e.g., kilowatt hours per unit). A copy of the utility allowance schedule must be sent to the HUD Field Office.

Table 1

Average Allowances For Tenant Purchased Utilities

Note: The consumption amounts listed below are inexact averages and must be used with caution when establishing allowances for actual projects.

	Monthly Consumption	
	Units	2 1/2-BR (a)
I. Electricity		
a. Lighting and Refrigeration	KWH	250-400 (b)
b. Cooking	KWH	110
c. Domestic Hot Water	KWH	340 (c)
d. Space Heating	KWH	680 (d)
e. Air Conditioning	KWH	180 (e)
II. Natural Gas And Bottle Gas		
a. Cooking	Therms	8
b. Domestic Hot Water	Therms	21 (c)
c. Space Heating	Therms	48 (d)
III. Fuel Oil		
a. Domestic Hot Water	Gals	17 (c)
b. Space Heating	Gals	40 (d)
IV. Water		
a. Domestic Use	Gals	8,000
b. Lawn	Gals	2,000

- (a) Estimated average consumption for a hypothetical 2 1/2 bedroom dwelling unit. All consumptions listed must be adjusted for the size of the dwelling unit. Factors shown under Determining Allowances, subparagraph d, may be used for making the adjustment.
- (b) Consumptions will vary considerably depending on electrical appliances used. Upper limit should be sufficient to provide 85 kilowatt hours for a clothes dryer and 50 kilowatt hours for a frost free refrigerator.
- (c) The temperature of local water supply varies by geographic area and will have considerable impact on energy used to heat domestic water. This estimate is for North Central geographic areas where the average city water temperature is approximately 50° F.
- (d) Consumptions are for housing insulated for the heating system installed. Normally a building designed for electric space heating is better insulated than one designed for gas or oil space heating equipment. Climatic conditions assumed to be 4,000 heating degree days and 0° F outside design temperature. Consumption must be adjusted for the normal heating degree days and the outside design temperature in the given geographic area.
- (e) Consumption estimated for 1,000 degree days cooling. Actual consumption will depend on many variables.

Note: The consumption amounts listed above are inexact averages and must be used with caution when establishing allowances for actual projects.

II. Maximum Annual Contributions	PHA Estimate (Housing Vouchers Only)			HUD Approved (Housing Vouchers Only)		
	Housing Payments	PHA Fee	PHA Estimate Total	Housing Payments	PHA Fee	HUD Approved Total
16. Estimated Annual Housing Assistance Payments (form HUD-52672, Line 15)						
17. Estimated Ongoing Administrative Fee (form HUD-52672, Line 18)						
18. Estimated Hard-to-House Fee (form HUD-52672, Line 19)						
19. Estimated Independent Public Accountant Audit Costs						
20. Estimated Preliminary Administrative and General Expense (form HUD-52672, Lines 27 and 36)						
21. Carryover of Preliminary Administrative and General Expense not Expended in the Previous FY Ending ()						
22. Estimated Non-Expendable Equipment Expense (form HUD-52672, Line 32)						
23. Carryover of Non-Expendable Equipment Expense not Expended in the Previous FY Ending ()						
24. Total Annual Contributions Required—Requested Fiscal Year (Lines 16 through 23)						
25. Deficit at End of Current Fiscal Year—Estimated or Actual						
26. Total Annual Contributions Required (Line 24 plus Line 25)						
27. Estimated Project Account Balance at End of Requested Fiscal Year (Line 15 minus Line 26)						
28. Provision for Project Account Requested Fiscal Year Increase (decrease) (Line 27 minus Line 14)						
III. Annual Contributions Approved						
29. Total Annual Contributions Approved/Requested Fiscal Year (Line 26 plus increase, if any, on Line 28)						
30. Source of Total Contributions Approved/Requested Fiscal Year:						
(a) Requested Fiscal Year Maximum Annual Contributions Commitment (Line 13 or Line 29, whichever is smaller)						
(b) Project Account (Line 29 minus Line 30(a))						

Name of PHA Approving Official		Name of Approving HUD Field Office Official	
Signature		Signature	
Title	Date (mm/dd/yyyy)	Title	Date (mm/dd/yyyy)

Voucher for Payment of Annual Contributions and Operating Statement

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(Exp. 9/30/2002)

Housing Assistance Payments Program
See Instructions in appropriate program and books

Public reporting burden for this collection of information is estimated to average 1.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless that collection displays a valid OMB control number. Authority for this collection of information is the Housing and Community Development Act of 1987. Housing Agencies (HAs) required to maintain financial reports in accordance with accepted accounting standards too permit timely and effective audits. The financial records identify the amount of annual contributions that are received and disbursed by HAs. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Public Housing Agency (HA) (name and address)		2. Project Number		3. Annual Contributions Contract Number		
4. Housing Program Type <input type="checkbox"/> Rental Certificate <input type="checkbox"/> Rental Voucher <input type="checkbox"/> Moderate Rehab. <input type="checkbox"/> Section 23						
5. HA Fiscal Year Ending Date (mark one and complete the year as YYYY) <input type="checkbox"/> March 31, _____ <input type="checkbox"/> June 30, _____ <input type="checkbox"/> Sept. 30, _____ <input type="checkbox"/> December 31, _____						
6. Number of Unit Months under Lease by Bedroom Size: 1BR		2BR	3BR	4BR	5BR	Other
7. Average Tenant Contribution		8. Portability Accounts Payable _____ Accounts Receivable _____				

Request is hereby made for the payment of annual contributions pursuant to the terms and conditions of the above numbered Annual Contributions Contract for the project and fiscal year shown above.

Part I. Request for Payment	Approved Budget Estimates (a)	HA Actuals Total (b)	HUD Approved Total (c)
Maximum Annual Contributions Available			
9. Maximum Annual Contributions Commitment (per ACC)			
10. Prorata Maximum Annual Contributions applicable to a Period of less than Twelve Months			
11. Contingency Reserve, ACC Program Reserve			
12. Total Annual Contributions Available (sum of lines 9, 10, and 11)			
Annual Contributions Required			
13. 4715 Housing Assistance Payments			
14. Security and Utility Deposit Fund (Section 23 Only)			
15. Ongoing Administrative Fees Earned			
16. Hard-to-House Fees Earned (Rental Certificates, Rental Vouchers, and Moderate Rehabilitation units converted to Rental Certificates)			
17. Actual Independent Public Accountant Audit Costs			
18. Total Preliminary Fees Earned			
19. Total Funds Required (sum of lines 13 thru 18)			
20. Deficit at End of Preceding Fiscal Year			
21. Program Receipts Other than Annual Contributions (3610, 3690, 7530, and Section 23 Security and Utility Deposits Repaid)			
22. Ongoing Fee Reduction			
23. Total Annual Contributions Required (line 19 plus line 20 minus line 21 minus line 22)			

	Approved Budget Estimates (a)	HA Actuals Total (b)	HUD Approved Total (c)
Balance of Annual Contributions Available			
24. ACC Program Reserve Balance (Amount by which line 12 exceeds line 23)			
25. Deficit (amount by which line 23 exceeds line 12)			
26. Provision for ACC Program Reserve			
a) Increase (Amount by which line 24 exceeds line 11)			
b) Decrease (amount by which line 11 exceeds line 24)			
Year End Settlement			
27. Annual Contributions due for Fiscal Year (line 23 minus line 25)			
28. Total Partial Payments Approved by HUD for Fiscal Year			
29. Underpayment due HA (amount by which line 27 exceeds line 28)			
30. Overpayment due HUD (amount by which line 28 exceeds line 27)			
Part II. Operating Receipts			
31. 3300 Interest Earned on Operating Reserve			
32. 3300P Administrative Fee Income - Portable Certificates and Vouchers			
33. 3610 Interest Earned on General Fund Investment			
34. 3690 Other Income			
35. 7530 Receipts from Non-Expendable Equipment not Replaced			
36. Total Annual Contributions Required (line 23)			
37. Total Receipts (sum of lines 31 thru 36)			
Part III. Operating Expenditures			
38. 4715 Housing Assistance Payments			
39. Independent Public Accountant Costs (Section 8 only)			
40. Total Ongoing Administrative Expenses			
41. Total Preliminary Fees Earned			
42. Total Expenditures (sum of lines 38 thru 41)			
Prior Year Adjustments			
43. Affecting Residual Receipts (or Deficit) for Debit (Credit)			
44. Total Operating Expenses (line 42 plus line 43)			
45. Net Income (or Deficit) before Provision for Operating Reserve (line 37 minus line 44)			

	Approved Budget Estimates (a)	HA Actuals Total (b)	HUD Approved Total (c)
Part IV. Analysis of Operating Reserve			
46. Operating Reserve - Balance at Beginning of FY Covered by this Statement			
47. Cash Deposits to (or Withdrawals from) Operating Reserve During Fiscal Year			
48. Net Income (or Deficit) before Provision for Operating Reserve (line 45)			
Provision for Operating Reserve (Acct. 7016/Sec. 8; Acct. 7016.1/Rental Vouchers)			
49. Addition (The amount of income, if any, on line 48)			
50. Deduction (The amount of deficit, if any, on line 48)			
51. Operating Reserve - Balance at End of Fiscal Year Covered by this Statement (line 46 plus or minus line 47 plus line 49 or minus line 50)			

I Certify that:

- (1) housing assistance payments have been or will be made only in accordance with Housing Assistance Payments Contracts or Rental Voucher Contracts in the form prescribed by HUD and in accordance with HUD regulations and requirements;
- (2) units have been inspected by the HA in accordance with HUD regulations and requirements; and
- (3) this voucher for annual contributions has been examined by me and to the best of my knowledge and belief is true, correct and complete.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Public Housing Agency	Title of Authorized HA Official	
	Signature of Authorized HA Official	Date (mm/dd/yyyy)

The Field Office has reviewed calculations of the Ongoing Administrative Fee. The HUD approved totals are the official totals as reported in HUD CAPs.

Name of Office	Signature of Director, Office of Public Housing	Date (mm/dd/yyyy)
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Overpayment to be offset \$ _____ Underpayment certified for payment to the HA \$ _____

**Housing Assistance Payments Contract
(HAP Contract)
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program**

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing
OMB Approval Pending

Instructions for use of HAP Contract

This form of Housing Assistance Payments Contract (HAP contract) is used to provide Section 8 tenant-based assistance under the housing choice voucher program (voucher program) of the U.S. Department of Housing and Urban Development (HUD). The main regulation for this program is 24 Code of Federal Regulations Part 982.

The local voucher program is administered by a public housing agency (PHA). The HAP contract is an agreement between the PHA and the owner of a unit occupied by an assisted family. The HAP contract has three parts:

- Part A Contract information (fill-ins).
See section by section instructions.
- Part B Body of contract
- Part C Tenancy addendum

Use of this form

Use of this HAP contract is required by HUD. Modification of the HAP contract is not permitted. The HAP contract must be word-for-word in the form prescribed by HUD.

However, the PHA may choose to add the following:

Language that prohibits the owner from collecting a security deposit in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. Such a prohibition must be added to Part A of the HAP contract.

Language that defines when the housing assistance payment by the PHA is deemed received by the owner (e.g., upon mailing by the PHA or actual receipt by the owner). Such language must be added to Part A of the HAP contract.

To prepare the HAP contract, fill in all contract information in Part A of the contract. Part A must then be executed by the owner and the PHA.

Use for special housing types

In addition to use for the basic Section 8 voucher program, this form must also be used for the following "special housing types" which are voucher program variants for special needs (see 24 CFR Part 982, Subpart M): (1) single room occupancy (SRO) housing; (2) congregate housing; (3) group home; (4) shared housing; and (5) manufactured home rental by a family that leases the manufactured home and space. When this form is used for a special housing type, the special housing type shall be specified in Part A of the HAP contract, as follows: "This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: (Insert Name of Special Housing type)."

The public reporting burden for this collection of information is estimated to average 1 hour per contract, including the time for reviewing the contract, signing it, gathering and maintaining the data, certifying, completing, and submitting the information between the PHA and Owner. Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f) is the authority for this contract; respondents receive a benefit.

However, this form may not be used for the following special housing types: (1) manufactured home space rental by a family that owns the manufactured home and leases only the space; (2) cooperative housing; and (3) the homeownership option under Section 8(y) of the United States Housing Act of 1937 (42 U.S.C. 1437f(y)).

How to fill in Part A

Section by Section Instructions

Section 2: Tenant

Enter full name of tenant.

Section 3. Contract Unit

Enter address of unit, including apartment number, if any.

Section 4. Household Members

Enter full names of all PHA-approved household members. Specify if any such person is a live-in aide, which is a person approved by the PHA to reside in the unit to provide supportive services for a family member who is a person with disabilities.

Section 5. Initial Lease Term

Enter first date and last date of initial lease term.

The initial lease term must be for at least one year. However, the PHA may approve a shorter initial lease term if the PHA determines that:

- o Such shorter term would improve housing opportunities for the tenant, and
- o Such shorter term is the prevailing local market practice.

Section 6. Initial Rent to Owner

Enter the amount of the monthly rent to owner during the initial lease term. The PHA must determine that the rent to owner is reasonable in comparison to rent for other comparable unassisted units. During the initial lease term, the owner may not raise the rent to owner.

Section 7. Housing Assistance Payment

Enter the initial amount of the monthly housing assistance payment.

Section 8. Utilities and Appliances

The lease and the HAP contract must specify what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the tenant. Fill in section 8 to show who is responsible to provide or pay for utilities and appliances.

**Housing Assistance Payments Contract
(HAP Contract)
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program**

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Part A of the HAP Contract: Contract Information

(To prepare the contract, fill out all contract information in Part A.)

1. Contents of Contract

This HAP contract has three parts:

- Part A: Contract Information
- Part B: Body of Contract
- Part C: Tenancy Addendum

2. Tenant

3. Contract Unit

4. Household

The following persons may reside in the unit. Other persons may not be added to the household without prior written approval of the owner and the PHA.

5. Initial Lease Term

The initial lease term begins on (mm/dd/yyyy): _____

The initial lease term ends on (mm/dd/yyyy): _____

6. Initial Rent to Owner

The initial rent to owner is: \$ _____

During the initial lease term, the owner may not raise the rent to owner.

7. Initial Housing Assistance Payment

The HAP contract term commences on the first day of the initial lease term. At the beginning of the HAP contract term, the amount of the housing assistance payment by the PHA to the owner is \$ _____ per month.

The amount of the monthly housing assistance payment by the PHA to the owner is subject to change during the HAP contract term in accordance with HUD requirements.

8. Utilities and Appliances

The owner shall provide or pay for the utilities and appliances indicated below by an "O". The tenant shall provide or pay for the utilities and appliances indicated below by a "T". Unless otherwise specified below, the owner shall pay for all utilities and appliances provided by the owner.

Item	Specify fuel type	Provided by	Paid by
Heating	<input type="checkbox"/> Natural gas <input type="checkbox"/> Bottle gas <input type="checkbox"/> Oil or Electric <input type="checkbox"/> Coal or Other		
Cooking	<input type="checkbox"/> Natural gas <input type="checkbox"/> Bottle gas <input type="checkbox"/> Oil or Electric <input type="checkbox"/> Coal or Other		
Water Heating	<input type="checkbox"/> Natural gas <input type="checkbox"/> Bottle gas <input type="checkbox"/> Oil or Electric <input type="checkbox"/> Coal or Other		
Other Electric			
Water			
Sewer			
Trash Collection			
Air Conditioning			
Refrigerator			
Range/Microwave			
Other (specify)			

Signatures:

Public Housing Agency

 Print or Type Name of PHA

 Signature

 Print or Type Name and Title of Signatory

 Date (mm/dd/yyyy)

Owner

 Print or Type Name of Owner

 Signature

 Print or Type Name and Title of Signatory

 Date (mm/dd/yyyy)

Mail Payments to:

 Name

 Address (street, city, State, Zip)

**Housing Assistance Payments Contract
(HAP) Contract
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program**

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Part B of HAP Contract: Body of Contract

1. Purpose

- a. This is a HAP contract between the PHA and the owner. The HAP contract is entered to provide assistance for the family under the Section 8 voucher program (see HUD program regulations at 24 Code of Federal Regulations Part 982).
- b. The HAP contract only applies to the household and contract unit specified in Part A of the HAP contract.
- c. During the HAP contract term, the PHA will pay housing assistance payments to the owner in accordance with the HAP contract.
- d. The family will reside in the contract unit with assistance under the Section 8 voucher program. The housing assistance payments by the PHA assist the tenant to lease the contract unit from the owner for occupancy by the family.

2. Lease of Contract Unit

- a. The owner has leased the contract unit to the tenant for occupancy by the family with assistance under the Section 8 voucher program.
- b. The PHA has approved leasing of the unit in accordance with requirements of the Section 8 voucher program.
- c. The lease for the contract unit must include word-for-word all provisions of the tenancy addendum required by HUD (Part C of the HAP contract).
- d. The owner certifies that:
 - (1) The owner and the tenant have entered into a lease of the contract unit that includes all provisions of the tenancy addendum.
 - (2) The lease is in a standard form that is used in the locality by the owner and that is generally used for other unassisted tenants in the premises.
 - (3) The lease is consistent with State and local law.
- e. The owner is responsible for screening the family's behavior or suitability for tenancy. The PHA is not responsible for such screening. The PHA has no liability or responsibility to the owner or other persons for the family's behavior or the family's conduct in tenancy.

3. Maintenance, Utilities, and Other Services

- a. The owner must maintain the contract unit and premises in accordance with the housing quality standards (HQS).
- b. The owner must provide all utilities needed to comply with the HQS.
- c. If the owner does not maintain the contract unit in accordance with the HQS, or fails to provide all utilities needed to comply with the HQS, the PHA may exercise any available remedies. PHA remedies for such breach include recovery of overpayments, suspension of hous-

ing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract. The PHA may not exercise such remedies against the owner because of an HQS breach for which the family is responsible, and that is not caused by the owner.

- d. The PHA shall not make any housing assistance payments if the contract unit does not meet the HQS, unless the owner corrects the defect within the period specified by the PHA and the PHA verifies the correction. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within the period specified by the PHA.
- e. The PHA may inspect the contract unit and premises at such times as the PHA determines necessary, to ensure that the unit is in accordance with the HQS.
- f. The PHA must notify the owner of any HQS defects shown by the inspection.
- g. The owner must provide all housing services as agreed to in the lease.

4. Term of HAP Contract

- a. **Relation to lease term.** The term of the HAP contract begins on the first day of the initial term of the lease, and terminates on the last day of the term of the lease (including the initial lease term and any extensions).
- b. **When HAP contract terminates.**
 - (1) The HAP contract terminates automatically if the lease is terminated by the owner or the tenant.
 - (2) The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the HAP contract terminates automatically.
 - (3) If the family moves from the contract unit, the HAP contract terminates automatically.
 - (4) The HAP contract terminates automatically 180 calendar days after the last housing assistance payment to the owner.
 - (5) The PHA may terminate the HAP contract if the PHA determines, in accordance with HUD requirements, that available program funding is not sufficient to support continued assistance for families in the program.

- (6) The PHA may terminate the HAP contract if the PHA determines that the contract unit does not provide adequate space in accordance with the HQS because of an increase in family size or a change in family composition.
- (7) If the family breaks up, the PHA may terminate the HAP contract, or may continue housing assistance payments on behalf of family members who remain in the contract unit.
- (8) The PHA may terminate the HAP contract if the PHA determines that the unit does not meet all requirements of the HQS, or determines that the owner has otherwise breached the HAP contract.
- 5. Provision and Payment for Utilities and Appliances**
- a. The lease must specify what utilities are to be provided or paid by the owner or the tenant.
- b. The lease must specify what appliances are to be provided or paid by the owner or the tenant.
- c. Part A of the HAP contract specifies what utilities and appliances are to be provided or paid by the owner or the tenant. The lease shall be consistent with the HAP contract.
- 6. Rent to Owner: Reasonable Rent**
- a. During the HAP contract term, the rent to owner may at no time exceed the reasonable rent for the contract unit as most recently determined or redetermined by the PHA in accordance with HUD requirements.
- b. The PHA must determine whether the rent to owner is reasonable in comparison to rent for other comparable unassisted units. To make this determination, the PHA must consider:
- (1) The location, quality, size, unit type, and age of the contract unit; and
- (2) Any amenities, housing services, maintenance and utilities provided and paid by the owner.
- c. The PHA must redetermine the reasonable rent when required in accordance with HUD requirements. The PHA may redetermine the reasonable rent at any time.
- d. During the HAP contract term, the rent to owner may not exceed rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA any information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.
- 7. PHA Payment to Owner**
- a. **When paid**
- (1) During the term of the HAP contract, the PHA must make monthly housing assistance payments to the owner on behalf of the family at the beginning of each month.
- (2) The PHA must pay housing assistance payments promptly when due to the owner.
- (3) If housing assistance payments are not paid promptly when due after the first two calendar months of the HAP contract term, the PHA shall pay the owner penalties in accordance with generally accepted practices and law, as applicable in the local housing market, governing penalties for late payment by a tenant. However, the PHA shall not be obligated to pay any late payment penalty if HUD determines that late payment by the PHA is due to factors beyond the PHA's control. Moreover, the PHA shall not be obligated to pay any late payment penalty if housing assistance payments by the PHA are delayed or denied as a remedy for owner breach of the HAP contract (including any of the following PHA remedies: recovery of overpayments, suspension of housing assistance payments, abatement or reduction of housing assistance payments, termination of housing assistance payments and termination of the contract).
- (4) Housing assistance payments shall only be paid to the owner while the family is residing in the contract unit during the term of the HAP contract. The PHA shall not pay a housing assistance payment to the owner for any month after the month when the family moves out.
- b. **Owner compliance with HAP contract.** Unless the owner has complied with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments under the HAP contract.
- c. **Amount of PHA payment to owner**
- (1) The amount of the monthly PHA housing assistance payment to the owner shall be determined by the PHA in accordance with HUD requirements for a tenancy under the voucher program.
- (2) The amount of the PHA housing assistance payment is subject to change during the HAP contract term in accordance with HUD requirements. The PHA must notify the family and the owner of any changes in the amount of the housing assistance payment.
- (3) The housing assistance payment for the first month of the HAP contract term shall be pro-rated for a partial month.
- d. **Application of payment.** The monthly housing assistance payment shall be credited against the monthly rent to owner for the contract unit.
- e. **Limit of PHA responsibility.**
- (1) The PHA is only responsible for making housing assistance payments to the owner in accordance with the HAP contract and HUD requirements for a tenancy under the voucher program.
- (2) The PHA shall not pay any portion of the rent to owner in excess of the housing assistance payment. The PHA shall not pay any other claim by the owner against the family.
- f. **Overpayment to owner.** If the PHA determines that the owner is not entitled to the housing assistance payment or any part of it, the PHA, in addition to other remedies, may deduct the amount of the overpayment from any amounts due the owner (including amounts due under any other Section 8 assistance contract).

8. Owner Certification

During the term of this contract, the owner certifies that:

- a. The owner is maintaining the contract unit and premises in accordance with the HQS.
 - b. The contract unit is leased to the tenant. The lease includes the tenancy addendum (Part C of the HAP contract), and is in accordance with the HAP contract and program requirements. The owner has provided the lease to the PHA, including any revisions of the lease.
 - c. The rent to owner does not exceed rents charged by the owner for rental of comparable unassisted units in the premises.
 - d. Except for the rent to owner, the owner has not received and will not receive any payments or other consideration (from the family, the PHA, HUD, or any other public or private source) for rental of the contract unit during the HAP contract term.
 - e. The family does not own or have any interest in the contract unit.
 - f. To the best of the owner's knowledge, the members of the family reside in the contract unit, and the unit is the family's only residence.
 - g. The owner (including a principal or other interested party) is not the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.
- 9. Prohibition of Discrimination.** In accordance with applicable equal opportunity statutes, Executive Orders, and regulations:
- a. The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the HAP contract.
 - b. The owner must cooperate with the PHA and HUD in conducting equal opportunity compliance reviews and complaint investigations in connection with the HAP contract.

10. Owner's Breach of HAP Contract

- a. Any of the following actions by the owner (including a principal or other interested party) is a breach of the HAP contract by the owner:
 - (1) If the owner has violated any obligation under the HAP contract, including the owner's obligation to maintain the unit in accordance with the HQS.
 - (2) If the owner has violated any obligation under any other housing assistance payments contract under Section 8.
 - (3) If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.

(4) For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan.

(5) If the owner has engaged in any drug-related criminal activity or any violent criminal activity.

- b. If the PHA determines that a breach has occurred, the PHA may exercise any of its rights and remedies under the HAP contract, or any other available rights and remedies for such breach. The PHA shall notify the owner of such determination, including a brief statement of the reasons for the determination. The notice by the PHA to the owner may require the owner to take corrective action, as verified or determined by the PHA, by a deadline prescribed in the notice.
- c. The PHA's rights and remedies for owner breach of the HAP contract include recovery of overpayments, suspension of housing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract.
- d. The PHA may seek and obtain additional relief by judicial order or action, including specific performance, other injunctive relief or order for damages.
- e. Even if the family continues to live in the contract unit, the PHA may exercise any rights and remedies for owner breach of the HAP contract.
- f. The PHA's exercise or non-exercise of any right or remedy for owner breach of the HAP contract is not a waiver of the right to exercise that or any other right or remedy at any time.

11. PHA and HUD Access to Premises and Owner's Records

- a. The owner must provide any information pertinent to the HAP contract that the PHA or HUD may reasonably require.
- b. The PHA, HUD and the Comptroller General of the United States shall have full and free access to the contract unit and the premises, and to all accounts and other records of the owner that are relevant to the HAP contract, including the right to examine or audit the records and to make copies.
- c. The owner must grant such access to computerized or other electronic records, and to any computers, equipment or facilities containing such records, and must provide any information or assistance needed to access the records.

12. Exclusion of Third Party Rights

- a. The family is not a party to or third party beneficiary of Part B of the HAP contract. The family may not enforce any provision of Part B, and may not exercise any right or remedy against the owner or PHA under Part B.

- b. The tenant or the PHA may enforce the tenancy addendum (Part C of the HAP contract) against the owner, and may exercise any right or remedy against the owner under the tenancy addendum.
- c. The PHA does not assume any responsibility for injury to, or any liability to, any person injured as a result of the owner's action or failure to act in connection with management of the contract unit or the premises or with implementation of the HAP contract, or as a result of any other action or failure to act by the owner.
- d. The owner is not the agent of the PHA, and the HAP contract does not create or affect any relationship between the PHA and any lender to the owner or any suppliers, employees, contractors or subcontractors used by the owner in connection with management of the contract unit or the premises or with implementation of the HAP contract.

13. Conflict of Interest

- a. "Covered individual" means a person or entity who is a member of any of the following classes:
 - (1) Any present or former member or officer of the PHA (except a PHA commissioner who is a participant in the program);
 - (2) Any employee of the PHA, or any contractor, subcontractor or agent of the PHA, who formulates policy or who influences decisions with respect to the program;
 - (3) Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the program; or
 - (4) Any member of the Congress of the United States.
- b. A covered individual may not have any direct or indirect interest in the HAP contract or in any benefits or payments under the contract (including the interest of an immediate family member of such covered individual) while such person is a covered individual or during one year thereafter.
- c. "Immediate family member" means the spouse, parent (including a stepparent), child (including a stepchild), grandparent, grandchild, sister or brother (including a stepsister or stepbrother) of any covered individual.
- d. The owner certifies and is responsible for assuring that no person or entity has or will have a prohibited interest, at execution of the HAP contract, or at any time during the HAP contract term.
- e. If a prohibited interest occurs, the owner shall promptly and fully disclose such interest to the PHA and HUD.
- f. The conflict of interest prohibition under this section may be waived by the HUD field office for good cause.
- g. No member of or delegate to the Congress of the United States or resident commissioner shall be admitted to any share or part of the HAP contract or to any benefits which may arise from it.

14. Assignment of the HAP Contract

- a. The owner may not assign the HAP contract to a new owner without the prior written consent of the PHA.
- b. If the owner requests PHA consent to assign the HAP contract to a new owner, the owner shall supply any information as required by the PHA pertinent to the proposed assignment.
- c. The HAP contract may not be assigned to a new owner that is debarred, suspended or subject to a limited denial of participation under HUD regulations (see 24 Code of Federal Regulations Part 24).
- d. The HAP contract may not be assigned to a new owner if HUD has prohibited such assignment because:
 - (1) The Federal government has instituted an administrative or judicial action against the owner or proposed new owner for violation of the Fair Housing Act or other Federal equal opportunity requirements, and such action is pending; or
 - (2) A court or administrative agency has determined that the owner or proposed new owner violated the Fair Housing Act or other Federal equal opportunity requirements.
- e. The HAP contract may not be assigned to a new owner if the new owner (including a principal or other interested party) is the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has determined (and has notified the family of such determination) that approving the assignment, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.
- f. The PHA may deny approval to assign the HAP contract if the owner or proposed new owner (including a principal or other interested party):
 - (1) Has violated obligations under a housing assistance payments contract under Section 8;
 - (2) Has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing program;
 - (3) Has engaged in any drug-related criminal activity or any violent criminal activity;
 - (4) Has a history or practice of non-compliance with the HQS for units leased under the Section 8 tenant-based programs, or non-compliance with applicable housing standards for units leased with project-based Section 8 assistance or for units leased under any other Federal housing program;
 - (5) Has a history or practice of failing to terminate tenancy of tenants assisted under any Federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that:
 - (a) Threatens the right to peaceful enjoyment of the premises by other residents;

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- (b) Threatens the health or safety of other residents, of employees of the PHA, or of owner employees or other persons engaged in management of the housing;
 - (c) Threatens the health or safety of, or the right to peaceful enjoyment of their residents by, persons residing in the immediate vicinity of the premises; or
 - (d) Is drug-related criminal activity or violent criminal activity;
- (6) Has a history or practice of renting units that fail to meet State or local housing codes; or
- (7) Has not paid State or local real estate taxes, fines or assessments.
- g. The new owner must agree to be bound by and comply with the HAP contract. The agreement must be in writing, and in a form acceptable to the PHA. The new owner must give the PHA a copy of the executed agreement.
- 15. Written Notices.** Any notice by the PHA or the owner in connection with this contract must be in writing.
- 16. Entire Agreement: Interpretation**
- a. The HAP contract contains the entire agreement between the owner and the PHA.
 - b. The HAP contract shall be interpreted and implemented in accordance with HUD requirements, including the HUD program regulations at 24 Code of Federal Regulations Part 982.

**Housing Assistance Payments Contract
(HAP Contract)
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program**

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Part C of HAP Contract: Tenancy Addendum

1. Section 8 Voucher Program

- a. The owner is leasing the contract unit to the tenant for occupancy by the tenant's family with assistance for a tenancy under the Section 8 housing choice voucher program (voucher program) of the United States Department of Housing and Urban Development (HUD).
- b. The owner has entered into a Housing Assistance Payments Contract (HAP contract) with the PHA under the voucher program. Under the HAP contract, the PHA will make housing assistance payments to the owner to assist the tenant in leasing the unit from the owner.

2. Lease

- a. The owner has given the PHA a copy of the lease, including any revisions agreed by the owner and the tenant. The owner certifies that the terms of the lease are in accordance with all provisions of the HAP contract and that the lease includes the tenancy addendum.
- b. The tenant shall have the right to enforce the tenancy addendum against the owner. If there is any conflict between the tenancy addendum and any other provisions of the lease, the language of the tenancy addendum shall control.

3. Use of Contract Unit

- a. During the lease term, the family will reside in the contract unit with assistance under the voucher program.
- b. The composition of the household must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. Other persons may not be added to the household without prior written approval of the owner and the PHA.
- c. The contract unit may only be used for residence by the PHA-approved household members. The unit must be the family's only residence. Members of the household may engage in legal profitmaking activities incidental to primary use of the unit for residence by members of the family.
- d. The tenant may not sublease or let the unit.
- e. The tenant may not assign the lease or transfer the unit.

4. Rent to Owner

- a. The initial rent to owner may not exceed the amount approved by the PHA in accordance with HUD requirements.
- b. Changes in the rent to owner shall be determined by the provisions of the lease. However, the owner may not raise the rent during the initial term of the lease.
- c. During the term of the lease (including the initial term of the lease and any extension term), the rent to owner may at no time exceed:
 - (1) The reasonable rent for the unit as most recently determined or redetermined by the PHA in accordance with HUD requirements, or

- (2) Rent charged by the owner for comparable unassisted units in the premises.

5. Family Payment to Owner

- a. The family is responsible for paying the owner any portion of the rent to owner that is not covered by the PHA housing assistance payment.
- b. Each month, the PHA will make a housing assistance payment to the owner on behalf of the family in accordance with the HAP contract. The amount of the monthly housing assistance payment will be determined by the PHA in accordance with HUD requirements for a tenancy under the Section 8 voucher program.
- c. The monthly housing assistance payment shall be credited against the monthly rent to owner for the contract unit.
- d. The tenant is not responsible for paying the portion of rent to owner covered by the PHA housing assistance payment under the HAP contract between the owner and the PHA. A PHA failure to pay the housing assistance payment to the owner is not a violation of the lease. The owner may not terminate the tenancy for nonpayment of the PHA housing assistance payment.
- e. The owner may not charge or accept, from the family or from any other source, any payment for rent of the unit in addition to the rent to owner. Rent to owner includes all housing services, maintenance, utilities and appliances to be provided and paid by the owner in accordance with the lease.
- f. The owner must immediately return any excess rent payment to the tenant.

6. Other Fees and Charges

- a. Rent to owner does not include cost of any meals or supportive services or furniture which may be provided by the owner.
- b. The owner may not require the tenant or family members to pay charges for any meals or supportive services or furniture which may be provided by the owner. Nonpayment of any such charges is not grounds for termination of tenancy.
- c. The owner may not charge the tenant extra amounts for items customarily included in rent to owner in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

7. Maintenance, Utilities, and Other Services

- a. **Maintenance**
 - (1) The owner must maintain the unit and premises in accordance with the HQS.
 - (2) Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

- b. Utilities and appliances**
- (1) The owner must provide all utilities needed to comply with the HQS.
 - (2) The owner is not responsible for a breach of the HQS caused by the tenant's failure to:
 - (a) Pay for any utilities that are to be paid by the tenant.
 - (b) Provide and maintain any appliances that are to be provided by the tenant.
- c. Family damage.** The owner is not responsible for a breach of the HQS because of damages beyond normal wear and tear caused by any member of the household or by a guest.
- d. Housing services.** The owner must provide all housing services as agreed to in the lease.
- 8. Termination of Tenancy by Owner**
- a. Requirements.** The owner may only terminate the tenancy in accordance with the lease and HUD requirements.
- b. Grounds.** During the term of the lease (the initial term of the lease or any extension term), the owner may only terminate the tenancy because of:
- (1) Serious or repeated violation of the lease;
 - (2) Violation of Federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the unit and the premises;
 - (3) Criminal activity or alcohol abuse (as provided in paragraph c); or
 - (4) Other good cause (as provided in paragraph d).
- c. Criminal activity or alcohol abuse.**
- (1) The owner may terminate the tenancy during the term of the lease if any member of the household, a guest or another person under a resident's control commits any of the following types of criminal activity:
 - (a) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);
 - (b) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
 - (c) Any violent criminal activity on or near the premises; or
 - (d) Any drug-related criminal activity on or near the premises.
 - (2) The owner may terminate the tenancy during the term of the lease if any member of the household is:
 - (a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
 - (b) Violating a condition of probation or parole under Federal or State law.
- (3) The owner may terminate the tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.
 - (4) The owner may terminate the tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety or right to peaceful enjoyment of the premises by other residents.
- d. Other good cause for termination of tenancy**
- (1) During the initial lease term, other good cause for termination of tenancy must be something the family did or failed to do.
 - (2) During the initial lease term or during any extension term, other good cause includes:
 - (a) Disturbance of neighbors,
 - (b) Destruction of property, or
 - (c) Living or housekeeping habits that cause damage to the unit or premises.
 - (3) After the initial lease term, such good cause includes:
 - (a) The tenant's failure to accept the owner's offer of a new lease or revision;
 - (b) The owner's desire to use the unit for personal or family use or for a purpose other than use as a residential rental unit; or
 - (c) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, the owner's desire to rent the unit for a higher rent).
- e. Eviction by court action.** The owner may only evict the tenant by a court action.
- f. Owner notice of grounds**
- (1) At or before the beginning of a court action to evict the tenant, the owner must give the tenant a notice that specifies the grounds for termination of tenancy. The notice may be included in or combined with any owner eviction notice.
 - (2) The owner must give the PHA a copy of any owner eviction notice at the same time the owner notifies the tenant.
 - (3) Eviction notice means a notice to vacate, or a complaint or other initial pleading used to begin an eviction action under State or local law.
- 9. Lease: Relation to HAP Contract**
- If the HAP contract terminates for any reason, the lease terminates automatically.
- 10. PHA Termination of Assistance**
- The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the lease terminates automatically.

11. Family Move Out

The tenant must notify the PHA and the owner before the family moves out of the unit.

12. Security Deposit

- a. The owner may collect a security deposit from the tenant. (However, the PHA may prohibit the owner from collecting a security deposit in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. Any such PHA-required restriction must be specified in the HAP contract.)
- b. When the family moves out of the contract unit, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, as reimbursement for any unpaid rent payable by the tenant, any damages to the unit or any other amounts that the tenant owes under the lease.
- c. The owner must give the tenant a list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must promptly refund the full amount of the unused balance to the tenant.
- d. If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may collect the balance from the tenant.

13. Prohibition of Discrimination

In accordance with applicable equal opportunity statutes, Executive Orders, and regulations, the owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status or disability in connection with the lease.

14. Conflict with Other Provisions of Lease

- a. The terms of the tenancy addendum are prescribed by HUD in accordance with Federal law and regulation, as a condition for Federal assistance to the tenant and tenant's family under the Section 8 voucher program.
- b. In case of any conflict between the provisions of the tenancy addendum as required by HUD, and any other provisions of the lease or any other agreement between the owner and the tenant, the requirements of the HUD-required tenancy addendum shall control.

15. Changes in Lease or Rent

- a. The tenant and the owner may not make any change in the tenancy addendum. However, if the tenant and the owner agree to any other changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must be in accordance with the requirements of the tenancy addendum.
- b. In the following cases, tenant-based assistance shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner:
 - (1) If there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;
 - (2) If there are any changes in lease provisions governing the term of the lease;
 - (3) If the family moves to a new unit, even if the unit is in the same building or complex.

- c. PHA approval of the tenancy, and execution of a new HAP contract, are not required for agreed changes in the lease other than as specified in paragraph b.
- d. The owner must notify the PHA of any changes in the amount of the rent to owner at least sixty days before any such changes go into effect, and the amount of the rent to owner following any such agreed change may not exceed the reasonable rent for the unit as most recently determined or redetermined by the PHA in accordance with HUD requirements.

16. Notices

Any notice under the lease by the tenant to the owner or by the owner to the tenant must be in writing.

17. Definitions

Contract unit. The housing unit rented by the tenant with assistance under the program.

Family. The persons who may reside in the unit with assistance under the program.

HAP contract. The housing assistance payments contract between the PHA and the owner. The PHA pays housing assistance payments to the owner in accordance with the HAP contract.

Household. The persons who may reside in the contract unit. The household consists of the family and any PHA-approved live-in aide. (A live-in aide is a person who resides in the unit to provide necessary supportive services for a member of the family who is a person with disabilities.)

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the Section 8 tenant-based programs.

HUD. The U.S. Department of Housing and Urban Development.

HUD requirements. HUD requirements for the Section 8 program. HUD requirements are issued by HUD headquarters, as regulations, Federal Register notices or other binding program directives.

Lease. The written agreement between the owner and the tenant for the lease of the contract unit to the tenant. The lease includes the tenancy addendum prescribed by HUD.

PHA. Public Housing Agency.

Premises. The building or complex in which the contract unit is located, including common areas and grounds.

Program. The Section 8 housing choice voucher program.

Rent to owner. The total monthly rent payable to the owner for the contract unit. The rent to owner is the sum of the portion of rent payable by the tenant plus the PHA housing assistance payment to the owner.

Section 8. Section 8 of the United States Housing Act of 1937 (42 United States Code 1437f).

Tenant. The family member (or members) who leases the unit from the owner.

Voucher program. The Section 8 housing choice voucher program. Under this program, HUD provides funds to an PHA for rent subsidy on behalf of eligible families. The tenancy under the lease will be assisted with rent subsidy for a tenancy under the voucher program.

Tenancy Addendum Section 8 Tenant-Based Assistance Housing Choice Voucher Program

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing
OMB Approval Pending

(To be attached to Tenant Lease)

1. Section 8 Voucher Program

- a. The owner is leasing the contract unit to the tenant for occupancy by the tenant's family with assistance for a tenancy under the Section 8 housing choice voucher program (voucher program) of the United States Department of Housing and Urban Development (HUD).
- b. The owner has entered into a Housing Assistance Payments Contract (HAP contract) with the PHA under the voucher program. Under the HAP contract, the PHA will make housing assistance payments to the owner to assist the tenant in leasing the unit from the owner.

2. Lease

- a. The owner has given the PHA a copy of the lease, including any revisions agreed by the owner and the tenant. The owner certifies that the terms of the lease are in accordance with all provisions of the HAP contract and that the lease includes the tenancy addendum.
- b. The tenant shall have the right to enforce the tenancy addendum against the owner. If there is any conflict between the tenancy addendum and any other provisions of the lease, the language of the tenancy addendum shall control.

3. Use of Contract Unit

- a. During the lease term, the family will reside in the contract unit with assistance under the voucher program.
- b. The composition of the household must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. Other persons may not be added to the household without prior written approval of the owner and the PHA.
- c. The contract unit may only be used for residence by the PHA-approved household members. The unit must be the family's only residence. Members of the household may engage in legal profitmaking activities incidental to primary use of the unit for residence by members of the family.
- d. The tenant may not sublease or let the unit.
- e. The tenant may not assign the lease or transfer the unit.

4. Rent to Owner

- a. The initial rent to owner may not exceed the amount approved by the PHA in accordance with HUD requirements.
- b. Changes in the rent to owner shall be determined by the provisions of the lease. However, the owner may not raise the rent during the initial term of the lease.
- c. During the term of the lease (including the initial term of the lease and any extension term), the rent to owner may at no time exceed:
 - (1) The reasonable rent for the unit as most recently determined or redetermined by the PHA in accordance with HUD requirements, or
 - (2) Rent charged by the owner for comparable unassisted units in the premises.

5. Family Payment to Owner

- a. The family is responsible for paying the owner any portion of the rent to owner that is not covered by the PHA housing assistance payment.
- b. Each month, the PHA will make a housing assistance payment to the owner on behalf of the family in accordance with the HAP contract. The amount of the monthly housing assistance payment will be determined by the PHA in accordance with HUD requirements for a tenancy under the Section 8 voucher program.
- c. The monthly housing assistance payment shall be credited against the monthly rent to owner for the contract unit.
- d. The tenant is not responsible for paying the portion of rent to owner covered by the PHA housing assistance payment under the HAP contract between the owner and the PHA. A PHA failure to pay the housing assistance payment to the owner is not a violation of the lease. The owner may not terminate the tenancy for nonpayment of the PHA housing assistance payment.
- e. The owner may not charge or accept, from the family or from any other source, any payment for rent of the unit in addition to the rent to owner. Rent to owner includes all housing services, maintenance, utilities and appliances to be provided and paid by the owner in accordance with the lease.
- f. The owner must immediately return any excess rent payment to the tenant.

6. Other Fees and Charges

- a. Rent to owner does not include cost of any meals or supportive services or furniture which may be provided by the owner.
- b. The owner may not require the tenant or family members to pay charges for any meals or supportive services or furniture which may be provided by the owner. Nonpayment of any such charges is not grounds for termination of tenancy.
- c. The owner may not charge the tenant extra amounts for items customarily included in rent to owner in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

7. Maintenance, Utilities, and Other Services

- a. **Maintenance**
 - (1) The owner must maintain the unit and premises in accordance with the HQS.
 - (2) Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.
- b. **Utilities and appliances**
 - (1) The owner must provide all utilities needed to comply with the HQS.
 - (2) The owner is not responsible for a breach of the HQS caused by the tenant's failure to:

- (a) Pay for any utilities that are to be paid by the tenant.
 - (b) Provide and maintain any appliances that are to be provided by the tenant.
 - c. **Family damage.** The owner is not responsible for a breach of the HQS because of damages beyond normal wear and tear caused by any member of the household or by a guest.
 - d. **Housing services.** The owner must provide all housing services as agreed to in the lease.
- 8. Termination of Tenancy by Owner**
- a. **Requirements.** The owner may only terminate the tenancy in accordance with the lease and HUD requirements.
 - b. **Grounds.** During the term of the lease (the initial term of the lease or any extension term), the owner may only terminate the tenancy because of:
 - (1) Serious or repeated violation of the lease;
 - (2) Violation of Federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the unit and the premises;
 - (3) Criminal activity or alcohol abuse (as provided in paragraph c); or
 - (4) Other good cause (as provided in paragraph d).
 - c. **Criminal activity or alcohol abuse.**
 - (1) The owner may terminate the tenancy during the term of the lease if any member of the household, a guest or another person under a resident's control commits any of the following types of criminal activity:
 - (a) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);
 - (b) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
 - (c) Any violent criminal activity on or near the premises; or
 - (d) Any drug-related criminal activity on or near the premises.
 - (2) The owner may terminate the tenancy during the term of the lease if any member of the household is:
 - (a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
 - (b) Violating a condition of probation or parole under Federal or State law.
 - (3) The owner may terminate the tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.
 - (4) The owner may terminate the tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety or right to peaceful enjoyment of the premises by other residents.
 - d. **Other good cause for termination of tenancy**
 - (1) During the initial lease term, other good cause for termination of tenancy must be something the family did or failed to do.
 - (2) During the initial lease term or during any extension term, other good cause includes:
 - (a) Disturbance of neighbors,
 - (b) Destruction of property, or
 - (c) Living or housekeeping habits that cause damage to the unit or premises.
 - (3) After the initial lease term, such good cause includes:
 - (a) The tenant's failure to accept the owner's offer of a new lease or revision;
 - (b) The owner's desire to use the unit for personal or family use or for a purpose other than use as a residential rental unit; or
 - (c) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, the owner's desire to rent the unit for a higher rent).
 - e. **Eviction by court action.** The owner may only evict the tenant by a court action.
 - f. **Owner notice of grounds**
 - (1) At or before the beginning of a court action to evict the tenant, the owner must give the tenant a notice that specifies the grounds for termination of tenancy. The notice may be included in or combined with any owner eviction notice.
 - (2) The owner must give the PHA a copy of any owner eviction notice at the same time the owner notifies the tenant.
 - (3) Eviction notice means a notice to vacate, or a complaint or other initial pleading used to begin an eviction action under State or local law.
- 9. Lease: Relation to HAP Contract**
If the HAP contract terminates for any reason, the lease terminates automatically.
- 10. PHA Termination of Assistance**
The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the lease terminates automatically.
- 11. Family Move Out**
The tenant must notify the PHA and the owner before the family moves out of the unit.
- 12. Security Deposit**
- a. The owner may collect a security deposit from the tenant. (However, the PHA may prohibit the owner from collecting a security deposit in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. Any such PHA-required restriction must be specified in the HAP contract.)

- b. When the family moves out of the contract unit, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, as reimbursement for any unpaid rent payable by the tenant, any damages to the unit or any other amounts that the tenant owes under the lease.
- c. The owner must give the tenant a list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must promptly refund the full amount of the unused balance to the tenant.
- d. If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may collect the balance from the tenant.

13. Prohibition of Discrimination

In accordance with applicable equal opportunity statutes, Executive Orders, and regulations, the owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status or disability in connection with the lease.

14. Conflict with Other Provisions of Lease

- a. The terms of the tenancy addendum are prescribed by HUD in accordance with Federal law and regulation, as a condition for Federal assistance to the tenant and tenant's family under the Section 8 voucher program.
- b. In case of any conflict between the provisions of the tenancy addendum as required by HUD, and any other provisions of the lease or any other agreement between the owner and the tenant, the requirements of the HUD-required tenancy addendum shall control.

15. Changes in Lease or Rent

- a. The tenant and the owner may not make any change in the tenancy addendum. However, if the tenant and the owner agree to any other changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must be in accordance with the requirements of the tenancy addendum.
- b. In the following cases, tenant-based assistance shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner:
 - (1) If there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;
 - (2) If there are any changes in lease provisions governing the term of the lease;
 - (3) If the family moves to a new unit, even if the unit is in the same building or complex.
- c. PHA approval of the tenancy, and execution of a new HAP contract, are not required for agreed changes in the lease other than as specified in paragraph b.
- d. The owner must notify the PHA of any changes in the amount of the rent to owner at least sixty days before any such changes go into effect, and the amount of the rent to owner following any such agreed change may not exceed the reasonable rent for the unit as most recently determined or redetermined by the PHA in accordance with HUD requirements.

16. Notices

Any notice under the lease by the tenant to the owner or by the owner to the tenant must be in writing.

17. Definitions

Contract unit. The housing unit rented by the tenant with assistance under the program.

Family. The persons who may reside in the unit with assistance under the program.

HAP contract. The housing assistance payments contract between the PHA and the owner. The PHA pays housing assistance payments to the owner in accordance with the HAP contract.

Household. The persons who may reside in the contract unit. The household consists of the family and any PHA-approved live-in aide. (A live-in aide is a person who resides in the unit to provide necessary supportive services for a member of the family who is a person with disabilities.)

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the Section 8 tenant-based programs.

HUD. The U.S. Department of Housing and Urban Development.

HUD requirements. HUD requirements for the Section 8 program. HUD requirements are issued by HUD headquarters, as regulations, Federal Register notices or other binding program directives.

Lease. The written agreement between the owner and the tenant for the lease of the contract unit to the tenant. The lease includes the tenancy addendum prescribed by HUD.

PHA. Public Housing Agency.

Premises. The building or complex in which the contract unit is located, including common areas and grounds.

Program. The Section 8 housing choice voucher program.

Rent to owner. The total monthly rent payable to the owner for the contract unit. The rent to owner is the sum of the portion of rent payable by the tenant plus the PHA housing assistance payment to the owner.

Section 8. Section 8 of the United States Housing Act of 1937 (42 United States Code 1437f).

Tenant. The family member (or members) who leases the unit from the owner.

Voucher program. The Section 8 housing choice voucher program. Under this program, HUD provides funds to an PHA for rent subsidy on behalf of eligible families. The tenancy under the lease will be assisted with rent subsidy for a tenancy under the voucher program.

**Housing Assistance Payments Contract
Manufactured Home Space Rental
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program**

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing
OMB Approval Pending

Instructions for use of HAP Contract

This form of Housing Assistance Payments Contract (HAP contract) is used to provide Section 8 tenant-based rental assistance for manufactured home space rental by an eligible low-income family under the housing choice voucher program (voucher program) of the U.S. Department of Housing and Urban Development (HUD).

The main regulation for the voucher program is 24 Code of Federal Regulations Part 982. Assistance for manufactured home space rental is a "special housing type" in the voucher program. Special voucher program requirements for special housing types are described in Subpart M of Part 982.

The local voucher program is administered by a public housing agency (PHA). The HAP contract for manufactured home space rental is an agreement between the PHA and the owner of a manufactured home space leased by an assisted family (manufactured home space owner). The family owns a manufactured home. During the lease term, the family will occupy a manufactured home located on the leased space.

Use of this form

The HAP contract has three parts:

- Part A: Contract information (fill-ins).
See section by section instructions.
- Part B: Body of contract
- Part C: Tenancy addendum

Use of this HAP contract is required by HUD. Modification of the HAP contract is not permitted. The HAP contract must be word-for-word in the form prescribed by HUD.

However, the PHA may choose to add the following:

- o Language that prohibits the owner from collecting a security deposit in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. Such a prohibition must be added to Part A of the HAP contract.
- o Language that defines when the housing assistance payment by the PHA is deemed received by the owner (e.g., upon mailing by the PHA or upon actual receipt by the owner). Such language must be added to Part A of the HAP contract.

To prepare the HAP contract, fill in all contract information in Part A of the contract. Part A must then be executed by the manufactured home space owner and the PHA.

The public reporting burden for this collection of information is estimated to average 1 hour per contract, including the time for reviewing the contract, signing it, gathering and maintaining the data, certifying, completing, and submitting the information between the PHA and Owner. Section 8 of the U.S. Housing Act of 1937 (42 U.S.C.1437f) is the authority for this contract; respondent receive a benefit.

How to fill in Part A

Section by section instructions

Section 2: Tenant

Enter full name of tenant.

Section 3. Manufactured Home Space

Enter address and designation of manufactured home space.

Section 4. Household Members

Enter full names of all PHA-approved household members. Specify if any such person is a live-in aide – a person approved by the PHA to reside in the manufactured home to provide supportive services for a family member who is a person with disabilities.

Section 5. Initial Lease Term

Enter first date and last date of initial lease term.

The initial lease term must be for at least one year. However, the PHA may approve a shorter initial lease term if the PHA determines that:

- o Such shorter term would improve housing opportunities for the tenant, and
- o Such shorter term is the prevailing local market practice.

Section 6. Initial Space Rent

Enter the amount of the monthly rent to owner for the space during the initial lease term. The rent to owner includes owner maintenance and management charges for the space, and charges for owner-paid utilities. However, rent to owner does not include tenant-paid utilities.

The PHA must determine that the rent to owner for the space is reasonable in comparison to rent for other comparable unassisted spaces. During the initial lease term, the owner may not raise the rent to owner.

Section 7. Housing Assistance Payment

Enter the initial amount of the monthly housing assistance payment.

Section 8. Utilities

The lease and the HAP contract must specify what utilities are to be supplied by the owner, and what utilities are to be supplied by the tenant. Fill in section 8 to show who is responsible to provide or pay for utilities.

**Housing Assistance Payments Contract
Manufactured Home Space Rental
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program**

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Part A of the HAP Contract: Contract Information

(To prepare the contract, fill out all contract information in Part A.)

1. Contents of Contract

The purpose of this HAP contract is to assist the household to lease a manufactured home space (space) from the owner. The HAP contract has three parts:

Part A: Contract Information

Part B: Body of Contract

Part C: Tenancy Addendum

2. Tenant

3. Manufactured Home Space: Address and Designation

4. Household Members

The following persons may reside in the manufactured home and space. Other persons may not be added to the household without prior written approval of the owner and the PHA.

5. Initial Lease Term (mm/dd/yyyy)

The initial lease term begins on: _____

The initial lease term ends on: _____

6. Initial Space Rent

The initial rent to owner for the space is: \$ _____

During the initial lease term, the owner may not raise the rent to owner.

7. Initial Housing Assistance Payment

The HAP contract term commences on the first day of the initial lease term. At the beginning of the HAP contract term, the amount of the housing assistance payment by the PHA to the owner is \$ _____ per month.

The amount of the monthly housing assistance payment by the PHA to the owner is subject to change during the HAP contract term in accordance with HUD requirements.

8. Utilities and Appliances

The owner shall provide or pay for the utilities and appliances indicated below by an "O". The tenant shall provide or pay for the utilities and appliances indicated below by a "T". Unless otherwise specified below, the owner shall pay for all utilities and appliances provided by the owner.

Item	Specify fuel type	Provided by	Paid by
Heating	<input type="checkbox"/> Natural gas <input type="checkbox"/> Bottle gas <input type="checkbox"/> Oil or Electric <input type="checkbox"/> Coal or Other		
Cooking	<input type="checkbox"/> Natural gas <input type="checkbox"/> Bottle gas <input type="checkbox"/> Oil or Electric <input type="checkbox"/> Coal or Other		
Water Heating	<input type="checkbox"/> Natural gas <input type="checkbox"/> Bottle gas <input type="checkbox"/> Oil or Electric <input type="checkbox"/> Coal or Other		
Other Electric			
Water			
Sewer			
Trash Collection			
Air Conditioning			N/A
Refrigerator			N/A
Range/Microwave			N/A
Other (specify)			

Signatures:

Public Housing Agency

Owner

Print or Type Name of PHA

Print or Type Name of Owner

Signature

Signature

Print or Type Name and Title of Signatory

Print or Type Name and Title of Signatory

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

Mail Payments to:

Name

Address (street, city, State, Zip)

**Housing Assistance Payments Contract
Manufactured Home Space Rental
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program**

U.S. Department of Housing
and Urban Development
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Part B of HAP Contract: Body of Contract

1. Purpose

- a. This is a HAP contract between the PHA and the owner. The HAP contract is entered to help the family pay rent for the manufactured home space (space) described in Part A of the HAP contract with monthly assistance payments from the PHA under the Section 8 voucher program (see HUD program regulations at 24 Code of Federal Regulations Part 982).
- b. During the HAP contract term, the PHA will pay housing assistance payments to the owner in accordance with the HAP contract. The housing assistance payments by the PHA assist the tenant to lease the space from the owner. The HAP contract only applies to the space and household identified in Part A (including any PHA-approved changes in household composition in accordance with this contract).

2. Lease of Manufactured Home Space

- a. The PHA has approved the leasing of the space in accordance with requirements of the Section 8 voucher program.
- b. The lease for the space must include word-for-word all provisions of the tenancy addendum required by HUD (Part C of the HAP contract).
- c. The owner certifies that:
 - (1) The owner and the tenant have entered into a lease for the space that includes all provisions of the tenancy addendum.
 - (2) The lease is in a standard form that is used in the locality by the owner for rental of a manufactured home space and that is used for other unassisted tenants in the manufactured home park.
 - (3) The lease is consistent with State and local law.
- d. The owner is responsible for screening the family's behavior or suitability for tenancy. The PHA is not responsible for such screening. The PHA has no liability or responsibility to the owner or other persons for the family's behavior or the family's conduct in tenancy.

3. Housing Quality Standards

- a. The PHA shall not make any housing assistance payments if the housing, including the space and the manufactured home, does not comply with the HQS, regardless of whether the failure is caused by the owner or by the household.
- b. The PHA may inspect the mobile home park, the space and the manufactured home at such times as the PHA determines necessary to ensure that the unit is in accordance with the HQS.
- c. The PHA must notify the owner and the tenant of any HQS defects shown by the inspection.
- d. The owner must provide all maintenance and management services for the space as agreed to in the lease.

4. Term of HAP Contract

- a. **Relation to lease term.** The term of the HAP contract begins on the first day of the initial term of the lease, and terminates on the last day of the term of the lease (including the initial lease term and any extensions).
- b. **When HAP contract terminates.**
 - (1) The HAP contract terminates automatically if the lease is terminated by the owner or the tenant.
 - (2) The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the HAP contract terminates automatically.
 - (3) The HAP contract terminates automatically if the family moves from the space, or if the family's manufactured home is removed from the space.
 - (4) The HAP contract terminates automatically 180 calendar days after the last housing assistance payment to the owner.
 - (5) The PHA may terminate the HAP contract if the PHA determines, in accordance with HUD requirements, that available program funding is not sufficient to support continued assistance for families in the program.
 - (6) The PHA may terminate the HAP contract if the PHA determines that the manufactured home does not provide adequate space in accordance with the HQS because of an increase in family size or a change in family composition.
 - (7) If the family breaks up, the PHA may terminate the HAP contract, or may continue housing assistance payments on behalf of family members who continue to reside in the manufactured home located on the space.
 - (8) The PHA may terminate the HAP contract if the PHA determines that the housing does not comply with all requirements of the HQS, or determines that the owner has otherwise breached the HAP contract.

5. Provision and Payment for Utilities

- a. The lease must specify what utilities are to be provided or paid by the owner or the tenant.
- b. Part A of the HAP contract specifies what utilities are to be provided or paid by the owner or the tenant. The lease shall be consistent with the HAP contract.

6. Rent to Owner: Reasonable Rent

- a. During the HAP contract term, the rent to owner for the space may at no time exceed the reasonable rent as most recently determined or redetermined by the PHA in accordance with HUD requirements.

- b. The PHA must determine whether the rent to owner is reasonable in comparison to rent for other comparable unassisted spaces. To make this determination, the PHA must consider:
- (1) The location and size of the space,
 - (2) Any utilities provided or paid by the owner in connection with rental of the space, and
 - (3) Any services and maintenance provided by the owner in accordance with the lease.
- c. The PHA must redetermine the reasonable rent when required in accordance with HUD requirements. The PHA may redetermine the reasonable rent at any time.
- d. During the HAP contract term, the rent to owner may not exceed rent charged by the owner for comparable unassisted spaces in the manufactured home park. The owner must give the PHA any information requested by the PHA on rents charged by the owner for rental of other spaces in the manufactured home park or elsewhere.
- 7. PHA Payment to Owner**
- a. **When paid**
- (1) During the term of the HAP contract, the PHA must make monthly housing assistance payments to the owner on behalf of the family at the beginning of each month.
 - (2) The PHA must pay housing assistance payments promptly when due to the owner.
 - (3) If housing assistance payments are not paid promptly when due after the first two calendar months of the HAP contract term, the PHA shall pay the owner penalties in accordance with generally accepted practices and law, as applicable in the local housing market, governing penalties for late payment by a tenant. However, the PHA shall not be obligated to pay any late payment penalty if HUD determines that late payment by the PHA is due to factors beyond the PHA's control. Moreover, the PHA shall not be obligated to pay any late payment penalty if housing assistance payments by the PHA are delayed or denied as a remedy for owner breach of the HAP contract (including any of the following PHA remedies: recovery of overpayments, suspension of housing assistance payments, abatement or reduction of housing assistance payments, termination of housing assistance payments and termination of the contract).
 - (4) Housing assistance payments shall only be paid to the owner while the family is residing in the manufactured home located on the space during the term of the HAP contract. The PHA shall not pay a housing assistance payment to the owner for any month after the month when the family moves from the space.
- b. **Owner compliance with HAP contract.** Unless the owner has complied with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments under the HAP contract.
- c. **Amount of PHA payment to owner**
- (1) The amount of the monthly PHA housing assistance payment to the owner shall be determined by the PHA in accordance with HUD requirements for a manufactured home space tenancy under the voucher program.
 - (2) The amount of the PHA housing assistance payment is subject to change during the HAP contract term in accordance with HUD requirements. The PHA must notify the family and the owner of any changes in the amount of the housing assistance payment.
 - (3) The housing assistance payment for the first month of the HAP contract term shall be prorated for a partial month.
- d. **Application of payment.** The monthly housing assistance payment shall be credited against the monthly rent to owner for the contract space.
- e. **Limit of PHA responsibility.**
- (1) The PHA is only responsible for making housing assistance payments to the owner in accordance with the HAP contract and HUD requirements for a manufactured home space tenancy assisted under the voucher program.
 - (2) The PHA shall not pay any portion of the rent to owner in excess of the housing assistance payment. The PHA shall not pay any other claim by the owner against the family.
- f. **Overpayment to owner.** If the PHA determines that the owner is not entitled to the housing assistance payment or any part of it, the PHA, in addition to other remedies, may deduct the amount of the overpayment from any amounts due the owner (including amounts due under any other Section 8 assistance contract).
- 8. Owner Certification.**
- During the term of this contract, the owner certifies that:
- a. The owner is operating the manufactured home park and the space in accordance with the housing quality standards (HQS), and is providing all maintenance and management services and facilities necessary for compliance with the HQS, including trash collection and facilities for disposal of waste and refuse.
 - b. The space is leased to the tenant. The lease includes the tenancy addendum for manufactured home space rental (Part C of the HAP contract), and is in accordance with the HAP contract and program requirements. The owner has provided the lease to the PHA, including any revisions of the lease.
 - c. The rent to owner does not exceed rents charged by the owner for rental of comparable unassisted spaces in the manufactured home park.
 - d. Except for the rent to owner, the owner has not received and will not receive any payments or other consideration (from the family, the PHA, HUD, or any other public or private source) for rental of the contract unit during the HAP contract term.
 - e. The family does not own or have any interest in the space.
 - f. To the best of the owner's knowledge, the members of the family reside in the manufactured home located on the space, and the manufactured home is the family's only residence.

- g. The owner (including a principal or other interested party) is not the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the space, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.
9. **Prohibition of Discrimination.** In accordance with applicable equal opportunity statutes, Executive Orders, and regulations:
- The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the HAP contract.
 - The owner must cooperate with the PHA and HUD in conducting equal opportunity compliance reviews and complaint investigations in connection with the HAP contract.
10. **Owner's Breach of HAP Contract**
- Any of the following actions by the owner (including a principal or other interested party) is a breach of the HAP contract by the owner:
 - If the owner has violated any obligation under the HAP contract.
 - If the owner has violated any obligation under any other housing assistance payments contract under Section 8.
 - If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.
 - For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan.
 - If the owner has engaged in any drug-related criminal activity or any violent criminal activity.
 - If the PHA determines that a breach has occurred, the PHA may exercise any of its rights and remedies under the HAP contract, or any other available rights and remedies for such breach. The PHA shall notify the owner of such determination, including a brief statement of the reasons for the determination. The notice by the PHA to the owner may require the owner to take corrective action, as verified or determined by the PHA, by a deadline prescribed in the notice.
 - The PHA's rights and remedies for owner breach of the HAP contract include recovery of overpayments, suspension of housing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract.
- The PHA may seek and obtain additional relief by judicial order or action, including specific performance, other injunctive relief or order for damages.
 - Even if the family continues to live in the manufactured home, the PHA may exercise any rights and remedies for owner breach of the HAP contract.
 - The PHA's exercise or non-exercise of any right or remedy for owner breach of the HAP contract is not a waiver of the right to exercise that or any other right or remedy at any time.
11. **PHA and HUD Access to Premises and Owner's Records**
- The owner must provide any information pertinent to the HAP contract that the PHA or HUD may reasonably require.
 - The PHA, HUD and the Comptroller General of the United States shall have full and free access to the manufactured home park, the space and the manufactured home, and to all accounts and other records of the owner that are relevant to the HAP contract, including the right to examine or audit the records and to make copies.
 - The owner must grant such access to computerized or other electronic records, and to any computers, equipment or facilities containing such records, and must provide any information or assistance needed to access the records.
12. **Exclusion of Third Party Rights**
- The family is not a party to or third party beneficiary of Part B of the HAP contract. The family may not enforce any provision of Part B, and may not exercise any right or remedy against the owner or PHA under Part B.
 - The tenant or the PHA may enforce the tenancy addendum (Part C of the HAP contract) against the owner, and may exercise any right or remedy against the owner under the tenancy addendum.
 - The PHA does not assume any responsibility for injury to, or any liability to, any person injured as a result of the owner's action or failure to act in connection with management of the space or the manufactured home park, or in conjunction with implementation of the HAP contract, or as a result of any other action or failure to act by the owner.
 - The owner is not the agent of the PHA, and the HAP contract does not create or affect any relationship between the PHA and any lender to the owner or any suppliers, employees, contractors or subcontractors used by the owner in connection with management of the space or the manufactured home park, or with implementation of the HAP contract.
13. **Conflict of Interest**
- "Covered individual" means a person or entity who is a member of any of the following classes:
 - Any present or former member or officer of the PHA (except a PHA commissioner who is a participant in the program);

- (2) Any employee of the PHA, or any contractor, subcontractor or agent of the PHA, who formulates policy or who influences decisions with respect to the program;
- (3) Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the program; or
- (4) Any member of the Congress of the United States.
- b. A covered individual may not have any direct or indirect interest in the HAP contract or in any benefits or payments under the contract (including the interest of an immediate family member of such covered individual) while such person is a covered individual or during one year thereafter.
- c. "Immediate family member" means the spouse, parent (including a stepparent), child (including a stepchild), grandparent, grandchild, sister or brother (including a stepsister or stepbrother) of any covered individual.
- d. The owner certifies and is responsible for assuring that no person or entity has or will have a prohibited interest, at execution of the HAP contract, or at any time during the HAP contract term.
- e. If a prohibited interest occurs, the owner shall promptly and fully disclose such interest to the PHA and HUD.
- f. The conflict of interest prohibition under this section may be waived by the HUD field office for good cause.
- g. No member of or delegate to the Congress of the United States or resident commissioner shall be admitted to any share or part of the HAP contract or to any benefits which may arise from it.
- 14. Assignment of the HAP Contract**
- a. The owner may not assign the HAP contract to a new owner without the prior written consent of the PHA.
- b. If the owner requests PHA consent to assign the HAP contract to a new owner, the owner shall supply any information as required by the PHA pertinent to the proposed assignment.
- c. The HAP contract may not be assigned to a new owner if the new owner (including a principal or other interested party) is debarred, suspended or subject to a limited denial of participation under HUD regulations (see 24 Code of Federal Regulations Part 24).
- d. The HAP contract may not be assigned to a new owner if HUD has prohibited such assignment because:
- (1) The Federal government has instituted an administrative or judicial action against the owner or proposed new owner for violation of the Fair Housing Act or other Federal equal opportunity requirements, and such action is pending; or
- (2) A court or administrative agency has determined that the owner or proposed new owner violated the Fair Housing Act or other Federal equal opportunity requirements.
- e. The HAP contract may not be assigned to a new owner if the new owner (including a principal or other interested party) is the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has determined (and has notified the family of such determination) that approving the assignment, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.
- f. The PHA may deny approval to assign the HAP contract if the owner or proposed new owner (including a principal or other interested party):
- (1) Has violated obligations under a housing assistance payments contract under Section 8;
- (2) Has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing program;
- (3) Has engaged in any drug-related criminal activity or any violent criminal activity;
- (4) Has a history or practice of noncompliance with the HQS for units leased under the Section 8 tenant-based programs, or noncompliance with applicable housing standards for units leased with project-based Section 8 assistance or for units leased under any other Federal housing program;
- (5) Has a history or practice of failing to terminate tenancy of tenants assisted under any federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that:
- (a) Threatens the right to peaceful enjoyment of the premises by other residents;
- (b) Threatens the health or safety of other residents, of employees of the PHA or of owner employees or other persons engaged in management of the housing;
- (c) Threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises; or
- (d) Is drug-related criminal activity or violent criminal activity;
- (6) Has a history or practice of renting spaces or units that fail to meet State or local housing codes; or
- (7) Has not paid State or local real estate taxes, fines or assessments.
- g. The new owner must agree to be bound by and comply with the HAP contract. The agreement must be in writing, and in a form acceptable to the PHA. The new owner must give the PHA a copy of the executed agreement.
- 15. Written Notices.** Any notice by the PHA or the owner in connection with this contract must be in writing.
- 16. Entire Agreement; Interpretation**
- a. The HAP contract contains the entire agreement between the owner and the PHA.
- b. The HAP contract shall be interpreted and implemented in accordance with HUD requirements, including the HUD program regulations at 24 Code of Federal Regulations Part 982.

**Housing Assistance Payments Contract
Manufactured Home Space Rental
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program**

**U.S. Department of Housing
and Urban Development**
Office of Public and Indian Housing

Part C of HAP Contract: Tenancy Addendum

1. Section 8 Voucher Program

- a. The owner has leased the manufactured home space (space) to the tenant for occupancy by the tenant's family with assistance for a tenancy under the Section 8 housing choice voucher program (voucher program) of the United States Department of Housing and Urban Development (HUD). During the term of the lease, a manufactured home owned by the family will be located on the space. The family will reside in the manufactured home with assistance under the voucher program.
- b. The owner has entered into a Housing Assistance Payments Contract (HAP contract) with the PHA under the voucher program. Under the HAP contract, the PHA will make housing assistance payments to the owner to help the family pay the rent for the space.

2. Lease

- a. The owner has given the PHA a copy of the lease, including any revisions agreed by the owner and the tenant. The owner certifies that the terms of the lease are in accordance with all provisions of the HAP contract, and that the lease includes the tenancy addendum.
- b. The tenant shall have the right to enforce the tenancy addendum against the owner. If there is any conflict between the tenancy addendum and any other provisions of the lease, the language of the tenancy addendum shall control.

3. Use of Manufactured Home

- a. During the lease term, the family will reside in the manufactured home located on the space with assistance under the voucher program.
- b. The composition of the household must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. Other persons may not be added to the household without prior written approval of the owner and the PHA.
- c. The manufactured home space may only be used for residence by the PHA-approved household members. The manufactured home must be the family's only residence. Members of the family may engage in legal profit-making activities incidental to primary use of the manufactured home and space for residence by members of the family.
- d. The tenant may not sublease or let the manufactured home or the space.
- e. The tenant may not assign the lease or transfer the space.

4. Rent to Owner

- a. The initial rent to owner for the space may not exceed the amount approved by the PHA in accordance with HUD requirements.
- b. Changes in the rent to owner for the space shall be determined by the provisions of the lease. However, the owner may not raise the rent during the initial term of the lease.

- c. During the term of the lease (including the initial term of the lease and any extension term), the rent to owner for the space may at no time exceed:

- (1) The reasonable rent for the space as most recently determined or redetermined by the PHA in accordance with HUD requirements, or
- (2) Rent charged by the owner for comparable unassisted spaces in the manufactured home park.

5. Family Payment to Owner

- a. The family is responsible for paying the owner any portion of the rent to owner that is not covered by the PHA housing assistance payment.
- b. Each month, the PHA will make a housing assistance payment to the owner on behalf of the family in accordance with the HAP contract. The amount of the monthly housing assistance payment will be determined by the PHA in accordance with HUD requirements for a manufactured home space tenancy under the Section 8 voucher program.
- c. The monthly housing assistance payment shall be credited against the monthly rent to owner for the space.
- d. The tenant is not responsible for paying the portion of rent to owner covered by the PHA housing assistance payment under the HAP contract between the owner and the PHA. A PHA failure to pay the housing assistance payment to the owner is not a violation of the lease. The owner may not terminate the tenancy for nonpayment of the PHA housing assistance payment.
- e. The owner may not charge or accept, from the family or from any other source, any payment for rent of the space in addition to the rent to owner. The rent to owner for the space includes owner management and maintenance charges for the space, and owner-paid utilities. However, rent to owner does not include tenant-paid utilities.
- f. The owner must immediately return any excess rent payment to the tenant.

6. Other Fees and Charges

- a. Rent to owner does not include cost of any meals or supportive services or furniture which may be provided by the owner.
- b. The owner may not require the tenant or family members to pay charges for any meals or supportive services or furniture which may be provided by the owner. Nonpayment of any such charges is not grounds for termination of tenancy.
- c. The owner may not charge the tenant extra amounts for items customarily included in rent to owner in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

7. Maintenance, Utilities, and Other Services

a. Maintenance

- (1) The manufactured home park and the space shall be operated in accordance with the housing quality standards (HQS). The owner shall provide all maintenance and management services and facilities necessary for compliance with the HQS, including: trash collection and facilities for disposal of waste and refuse. However, the owner is not required to maintain or repair the family's manufactured home.
- (2) The owner shall provide adequate maintenance of roads, walkways and other common areas and facilities, and shall assure that the family has adequate access to the space.

b. Utilities and appliances

- (1) The owner must provide sources and lines for supply of all utilities needed to comply with the HQS, including water, electricity and other necessary utilities.
- (2) The owner is not responsible for a breach of the HQS caused by the tenant's failure to:
 - (a) Pay for any utilities that are to be paid by the tenant.
 - (b) Provide and maintain any appliances that are to be provided by the tenant.

- c. Family damage.** The owner is not responsible for a breach of HQS because of damages to the manufactured home by a member of the household.

8. Termination of Tenancy by Owner

- a. Requirements.** The owner may only terminate the tenancy in accordance with the lease and HUD requirements.

- b. Grounds.** During the term of the lease (the initial term of the lease or any extension term), the owner may only terminate the tenancy because of:

- (1) Serious or repeated violation of the lease;
- (2) Violation of Federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the space and the manufactured home park;
- (3) Criminal activity or alcohol abuse (as provided in paragraph c); or
- (4) Other good cause (as provided in paragraph d).

c. Criminal activity or alcohol abuse.

- (1) The owner may terminate the tenancy during the term of the lease if any member of the household, a guest or another person under a resident's control commits any of the following types of criminal activity:
 - (a) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the manufactured home park by, other residents (including property management staff residing in the manufactured home park);
 - (b) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the manufactured home park;
 - (c) Any violent criminal activity on or near the manufactured home park; or
 - (d) Any drug-related criminal activity on or near the manufactured home park.

- (2) The owner may terminate the tenancy during the term of the lease if any member of the household is:

- (a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- (b) Violating a condition of probation or parole under Federal or State law.

- (3) The owner may terminate the tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

- (4) The owner may terminate the tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety or right to peaceful enjoyment of the manufactured home park by other residents.

d. Other good cause for termination of tenancy

- (1) During the initial lease term, other good cause for termination of tenancy must be something the family did or failed to do.

- (2) During the initial lease term or during any extension term, other good cause includes:

- (a) Disturbance of neighbors,
- (b) Destruction of property, or
- (c) Living or housekeeping habits that cause damage to the manufactured home, the space or the manufactured home park.

- (3) After the initial lease term, such good cause includes:

- (a) The tenant's failure to accept the owner's offer of a new lease or revision;
- (b) The owner's desire to use the space for personal or family use or for a purpose other than residential rental use; or
- (c) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the manufactured home park, the owner's desire to rent the space for a higher rent).

- e. Eviction by court action.** The owner may only evict the tenant from the space by a court action.

f. Owner notice of grounds

- (1) The owner must give the tenant a notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice to the tenant.
- (2) The notice must be given at or before commencement of the eviction action. The notice may be included in or combined with any owner eviction notice.
- (3) The owner must give the PHA a copy of any owner eviction notice at the same time the owner notifies the tenant.
- (4) Eviction notice means a notice to vacate, or a complaint or other initial pleading used to begin an eviction action under State or local law.

9. **Lease: Relation to HAP Contract.** If the HAP contract terminates for any reason, the lease terminates automatically.
10. **PHA Termination of Assistance.** The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the lease terminates automatically.
11. **Family Move-Out.** The tenant must notify the PHA and the owner before the family moves out of the space.
12. **Security Deposit**
- The owner may collect a security deposit from the tenant. (However, the PHA may prohibit the owner from collecting a security deposit in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. Any such PHA-required restriction must be specified in the HAP contract.)
 - When the family moves out of the space, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, as reimbursement for any unpaid rent payable by the tenant, any damages or any other amounts that the tenant owes under the lease.
 - The owner must give the tenant a list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must promptly refund the full amount of the unused balance to the tenant.
 - If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may collect the balance from the tenant.
13. **Prohibition of Discrimination.** In accordance with applicable equal opportunity statutes, Executive Orders, and regulations, the owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status or disability in connection with the lease.
14. **Conflict with Other Provisions of Lease**
- The terms of the tenancy addendum are prescribed by HUD in accordance with Federal law and regulation, as a condition for Federal assistance to the tenant and tenant's family under the Section 8 voucher program.
 - In case of any conflict between the provisions of the tenancy addendum as required by HUD, and any other provisions of the lease or any other agreement between the owner and the tenant, the requirements of the HUD-required tenancy addendum shall control.
15. **Changes in Lease or Rent**
- The tenant and the owner may not make any change in the tenancy addendum. However, if the tenant and the owner agree to any other changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must be in accordance with the requirements of the tenancy addendum.
 - In the following cases, tenant-based assistance shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner:
 - If there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;
 - If there are any changes in lease provisions governing the term of the lease;
 - If the family moves to a new unit, even if the unit is in the same building or complex.
 - PHA approval of the tenancy, and execution of a new HAP contract, are not required for agreed changes in the lease other than as specified in paragraph b.
 - The owner must notify the PHA of any changes in the amount of the rent to owner at least sixty days before any such changes go into effect, and the amount of the rent to owner following any such agreed change may not exceed the reasonable rent for the space as most recently determined or redetermined by the PHA in accordance with HUD requirements.
16. **Notices.** Any notice under the lease by the tenant to the owner or by the owner to the tenant must be in writing.
17. **Definitions**
- Family.** The persons who may reside in the manufactured home located on the space with assistance under the program.
- HAP contract.** The housing assistance payments contract between the PHA and the owner. The PHA pays housing assistance payments to the owner in accordance with the HAP contract.
- Household.** The persons who may reside in the manufactured home located on the space. The household consists of the family and any PHA-approved live-in aide. (A live-in aide is a person who resides in the unit to provide necessary supportive services for a member of the family who is a person with disabilities.)
- Housing quality standards (HQS).** The HUD minimum quality standards for manufactured housing assisted under the Section 8 tenant-based programs.
- HUD.** The U.S. Department of Housing and Urban Development.
- HUD requirements.** HUD requirements for the Section 8 program. HUD requirements are issued by HUD headquarters, as regulations, Federal Register notices or other binding program directives.
- Lease.** The written agreement between the owner and the tenant for the lease of the space to the tenant. The lease includes the tenancy addendum prescribed by HUD.
- Manufactured home park.** The property on which the space is located, including common areas and grounds.
- PHA.** Public Housing Agency.
- Program.** The Section 8 housing choice voucher program.
- Rent to owner.** The total monthly rent payable to the owner for the space. The rent to owner is the sum of the portion of rent payable by the tenant plus the PHA housing assistance payment to the owner.
- Section 8.** Section 8 of the United States Housing Act of 1937 (42 United States Code 1437f).
- Space (manufactured home space).** The manufactured home space rented by the tenant with assistance under the program.
- Tenant.** The family member (or members) who leases the space from the owner.
- Voucher program.** The Section 8 housing choice voucher program. Under this program, HUD provides funds to a PHA for rent subsidy on behalf of eligible families. The tenancy under the lease will be assisted with rent subsidy for a tenancy under the voucher program.

**Tenancy Addendum
Manufactured Home Space Rental
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program**
(To be attached to Tenant Lease)

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Tenancy Addendum

1. Section 8 Voucher Program

- a. The owner has leased the manufactured home space (space) to the tenant for occupancy by the tenant's family with assistance for a tenancy under the Section 8 housing choice voucher program (voucher program) of the United States Department of Housing and Urban Development (HUD). During the term of the lease, a manufactured home owned by the family will be located on the space. The family will reside in the manufactured home with assistance under the voucher program.
- b. The owner has entered into a Housing Assistance Payments Contract (HAP contract) with the PHA under the voucher program. Under the HAP contract, the PHA will make housing assistance payments to the owner to help the family pay the rent for the space.

2. Lease

- a. The owner has given the PHA a copy of the lease, including any revisions agreed by the owner and the tenant. The owner certifies that the terms of the lease are in accordance with all provisions of the HAP contract, and that the lease includes the tenancy addendum.
- b. The tenant shall have the right to enforce the tenancy addendum against the owner. If there is any conflict between the tenancy addendum and any other provisions of the lease, the language of the tenancy addendum shall control.

3. Use of Manufactured Home

- a. During the lease term, the family will reside in the manufactured home located on the space with assistance under the voucher program.
- b. The composition of the household must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. Other persons may not be added to the household without prior written approval of the owner and the PHA.
- c. The manufactured home space may only be used for residence by the PHA-approved household members. The manufactured home must be the family's only residence. Members of the family may engage in legal profit-making activities incidental to primary use of the manufactured home and space for residence by members of the family.
- d. The tenant may not sublease or let the manufactured home or the space.
- e. The tenant may not assign the lease or transfer the space.

4. Rent to Owner

- a. The initial rent to owner for the space may not exceed the amount approved by the PHA in accordance with HUD requirements.
- b. Changes in the rent to owner for the space shall be determined by the provisions of the lease. However, the owner may not raise the rent during the initial term of the lease.

- c. During the term of the lease (including the initial term of the lease and any extension term), the rent to owner for the space may at no time exceed:
 - (1) The reasonable rent for the space as most recently determined or redetermined by the PHA in accordance with HUD requirements, or
 - (2) Rent charged by the owner for comparable unassisted spaces in the manufactured home park.

5. Family Payment to Owner

- a. The family is responsible for paying the owner any portion of the rent to owner that is not covered by the PHA housing assistance payment.
- b. Each month, the PHA will make a housing assistance payment to the owner on behalf of the family in accordance with the HAP contract. The amount of the monthly housing assistance payment will be determined by the PHA in accordance with HUD requirements for a manufactured home space tenancy under the Section 8 voucher program.
- c. The monthly housing assistance payment shall be credited against the monthly rent to owner for the space.
- d. The tenant is not responsible for paying the portion of rent to owner covered by the PHA housing assistance payment under the HAP contract between the owner and the PHA. A PHA failure to pay the housing assistance payment to the owner is not a violation of the lease. The owner may not terminate the tenancy for nonpayment of the PHA housing assistance payment.
- e. The owner may not charge or accept, from the family or from any other source, any payment for rent of the space in addition to the rent to owner. The rent to owner for the space includes owner management and maintenance charges for the space, and owner-paid utilities. However, rent to owner does not include tenant-paid utilities.
- f. The owner must immediately return any excess rent payment to the tenant.

6. Other Fees and Charges

- a. Rent to owner does not include cost of any meals or supportive services or furniture which may be provided by the owner.
- b. The owner may not require the tenant or family members to pay charges for any meals or supportive services or furniture which may be provided by the owner. Nonpayment of any such charges is not grounds for termination of tenancy.
- c. The owner may not charge the tenant extra amounts for items customarily included in rent to owner in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

7. Maintenance, Utilities, and Other Services**a. Maintenance**

- (1) The manufactured home park and the space shall be operated in accordance with the housing quality standards (HQS). The owner shall provide all maintenance and management services and facilities necessary for compliance with the HQS, including: trash collection and facilities for disposal of waste and refuse. However, the owner is not required to maintain or repair the family's manufactured home.
- (2) The owner shall provide adequate maintenance of roads, walkways and other common areas and facilities, and shall assure that the family has adequate access to the space.

b. Utilities and appliances

- (1) The owner must provide sources and lines for supply of all utilities needed to comply with the HQS, including water, electricity and other necessary utilities.
- (2) The owner is not responsible for a breach of the HQS caused by the tenant's failure to:
 - (a) Pay for any utilities that are to be paid by the tenant.
 - (b) Provide and maintain any appliances that are to be provided by the tenant.

c. Family damage. The owner is not responsible for a breach of HQS because of damages to the manufactured home by a member of the household.**8. Termination of Tenancy by Owner****a. Requirements.** The owner may only terminate the tenancy in accordance with the lease and HUD requirements.**b. Grounds.** During the term of the lease (the initial term of the lease or any extension term), the owner may only terminate the tenancy because of:

- (1) Serious or repeated violation of the lease;
- (2) Violation of Federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the space and the manufactured home park;
- (3) Criminal activity or alcohol abuse (as provided in paragraph c); or
- (4) Other good cause (as provided in paragraph d).

c. Criminal activity or alcohol abuse.

- (1) The owner may terminate the tenancy during the term of the lease if any member of the household, a guest or another person under a resident's control commits any of the following types of criminal activity:
 - (a) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the manufactured home park by, other residents (including property management staff residing in the manufactured home park);
 - (b) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the manufactured home park;
 - (c) Any violent criminal activity on or near the manufactured home park; or
 - (d) Any drug-related criminal activity on or near the manufactured home park.

(2) The owner may terminate the tenancy during the term of the lease if any member of the household is:

- (a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- (b) Violating a condition of probation or parole under Federal or State law.

(3) The owner may terminate the tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.**(4) The owner may terminate the tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety or right to peaceful enjoyment of the manufactured home park by other residents.****d. Other good cause for termination of tenancy****(1) During the initial lease term, other good cause for termination of tenancy must be something the family did or failed to do.****(2) During the initial lease term or during any extension term, other good cause includes:**

- (a) Disturbance of neighbors,
- (b) Destruction of property, or
- (c) Living or housekeeping habits that cause damage to the manufactured home, the space or the manufactured home park.

(3) After the initial lease term, such good cause includes:

- (a) The tenant's failure to accept the owner's offer of a new lease or revision;
- (b) The owner's desire to use the space for personal or family use or for a purpose other than residential rental use; or
- (c) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the manufactured home park, the owner's desire to rent the space for a higher rent).

e. Eviction by court action. The owner may only evict the tenant from the space by a court action.**f. Owner notice of grounds**

- (1) The owner must give the tenant a notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice to the tenant.
- (2) The notice must be given at or before commencement of the eviction action. The notice may be included in or combined with any owner eviction notice.
- (3) The owner must give the PHA a copy of any owner eviction notice at the same time the owner notifies the tenant.
- (4) Eviction notice means a notice to vacate, or a complaint or other initial pleading used to begin an eviction action under State or local law.

9. **Lease: Relation to HAP Contract.** If the HAP contract terminates for any reason, the lease terminates automatically.
10. **PHA Termination of Assistance.** The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the lease terminates automatically.
11. **Family Move-Out.** The tenant must notify the PHA and the owner before the family moves out of the space.
12. **Security Deposit**
- The owner may collect a security deposit from the tenant. (However, the PHA may prohibit the owner from collecting a security deposit in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. Any such PHA-required restriction must be specified in the HAP contract.)
 - When the family moves out of the space, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, as reimbursement for any unpaid rent payable by the tenant, any damages or any other amounts that the tenant owes under the lease.
 - The owner must give the tenant a list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must promptly refund the full amount of the unused balance to the tenant.
 - If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may collect the balance from the tenant.
13. **Prohibition of Discrimination.** In accordance with applicable equal opportunity statutes, Executive Orders, and regulations, the owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status or disability in connection with the lease.
14. **Conflict with Other Provisions of Lease**
- The terms of the tenancy addendum are prescribed by HUD in accordance with Federal law and regulation, as a condition for Federal assistance to the tenant and tenant's family under the Section 8 voucher program.
 - In case of any conflict between the provisions of the tenancy addendum as required by HUD, and any other provisions of the lease or any other agreement between the owner and the tenant, the requirements of the HUD-required tenancy addendum shall control.
15. **Changes in Lease or Rent**
- The tenant and the owner may not make any change in the tenancy addendum. However, if the tenant and the owner agree to any other changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must be in accordance with the requirements of the tenancy addendum.
 - In the following cases, tenant-based assistance shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner:
 - If there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;
 - If there are any changes in lease provisions governing the term of the lease;
 - If the family moves to a new unit, even if the unit is in the same building or complex.
 - PHA approval of the tenancy, and execution of a new HAP contract, are not required for agreed changes in the lease other than as specified in paragraph b.
 - The owner must notify the PHA of any changes in the amount of the rent to owner at least sixty days before any such changes go into effect, and the amount of the rent to owner following any such agreed change may not exceed the reasonable rent for the space as most recently determined or redetermined by the PHA in accordance with HUD requirements.
16. **Notices.** Any notice under the lease by the tenant to the owner or by the owner to the tenant must be in writing.
17. **Definitions**
- Family.** The persons who may reside in the manufactured home located on the space with assistance under the program.
- HAP contract.** The housing assistance payments contract between the PHA and the owner. The PHA pays housing assistance payments to the owner in accordance with the HAP contract.
- Household.** The persons who may reside in the manufactured home located on the space. The household consists of the family and any PHA-approved live-in aide. (A live-in aide is a person who resides in the unit to provide necessary supportive services for a member of the family who is a person with disabilities.)
- Housing quality standards (HQS).** The HUD minimum quality standards for manufactured housing assisted under the Section 8 tenant-based programs.
- HUD.** The U.S. Department of Housing and Urban Development.
- HUD requirements.** HUD requirements for the Section 8 program. HUD requirements are issued by HUD headquarters, as regulations, Federal Register notices or other binding program directives.
- Lease.** The written agreement between the owner and the tenant for the lease of the space to the tenant. The lease includes the tenancy addendum prescribed by HUD.
- Manufactured home park.** The property on which the space is located, including common areas and grounds.
- PHA.** Public Housing Agency.
- Program.** The Section 8 housing choice voucher program.
- Rent to owner.** The total monthly rent payable to the owner for the space. The rent to owner is the sum of the portion of rent payable by the tenant plus the PHA housing assistance payment to the owner.
- Section 8.** Section 8 of the United States Housing Act of 1937 (42 United States Code 1437f).
- Space (manufactured home space).** The manufactured home space rented by the tenant with assistance under the program.
- Tenant.** The family member (or members) who leases the space from the owner.
- Voucher program.** The Section 8 housing choice voucher program. Under this program, HUD provides funds to a PHA for rent subsidy on behalf of eligible families. The tenancy under the lease will be assisted with rent subsidy for a tenancy under the voucher program.

[FR Doc. 02-25343 Filed 10-7-02; 8:45 am]
 BILLING CODE 4210-33-C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4734-N-59]

Notice of Submission of Proposed Information Collection to OMB: Public Housing Agency (PHA) Plan

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 7, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577-0226) and should be sent to: Lauren Wittenberg,

OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395-6974; e-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT:

Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708-2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable;

(6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Public Housing Agency (PHA) Plan.

OMB Approval Number: 2577-0226.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Public Housing Agencies (PHAs) must submit 5-year plans and annual plans for tenant-based assistance and public housing operating subsidies.

Respondents: State, Local or Tribal Government.

Frequency of Submission: Annually, Other (Every five years).

	Number of re- spondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	4,100	1	21	85,800

Total Estimated Burden Hours:
85,800.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 1, 2002.

Wayne Eddins,

*Departmental Reports Management Officer,
Office of the Chief Information Officer.*

[FR Doc. 02-25500 Filed 10-7-02; 8:45 am]

BILLING CODE 4210-72-M

DEPARTMENT OF THE INTERIOR

Office of Indian Education Programs

Submission of Information Collection to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Office of Indian Education Programs, Interior.

ACTION: Notice of renewal of a currently approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act, this notice

announces that the Bureau of Indian Affairs is submitting an information collection to the Office of Management and Budget for renewal. The collection concerns the enrollment applications for two Bureau operated post secondary schools: Haskell Indian Nations University and Southwestern Indian Polytechnic Institute. We are requesting a renewal of clearance and requesting comments on this information collection.

DATES: Written comments must be submitted on or before November 7, 2002.

ADDRESSES: You are requested to send any comments to Attention: Desk Officer for the Department of the Interior, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503. Please send a copy of your written comments to Kenneth Whitehorn, Department of the Interior, Office of Indian Education Programs, Branch of Planning, MS Room 3512 MIB, 1849 C Street, NW., Washington, DC 20240. You may fax your written comments to (202) 208-3312.

FOR FURTHER INFORMATION CONTACT: Kenneth Whitehorn, (202) 208-4976.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

I. Abstract

The Bureau of Indian Affairs (BIA) is submitting the admission forms for Haskell Indian Nations University and the Southwestern Indian Polytechnic Institute for review by OMB. These admission forms are useful in determining program eligibility of American Indian and Alaska Native students for educational services. The forms have been changed to include a Paperwork Reduction Act and Public Burden statements, a Privacy Act statement, and an Effects of Non Disclosure statement.

These forms are utilized pursuant to Blood Quantum Act, Public Law 99-

228; the Snyder Act, Chapter 115, Public Law 67-85; and, the Indian Appropriations of the 48th Congress, Chapter 180, page 91, For Support of Schools, July 4, 1884.

II. Request for Comments

A notice announcing the emergency clearance and requesting comments was published on April 23, 2002 (67 FR 19770). There were no comments received regarding that notice, however, the Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

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

All written comments will be available for public inspection in Room 3512 of the Main Interior Building, 1849 C Street, NW., Washington, DC, from 7:45 a.m. to 4:15 p.m. EST, Monday through Friday, excluding legal holidays. If you wish to have your name or address withheld from public view, you must state this prominently at the beginning of your comments. We will honor your request to the extent allowed by law.

We will not request nor sponsor a collection of information, and you need not respond to such a request, if there is no valid Office of Management and Budget Control Number.

III. Data

Title: Applications for Admission to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute.

OMB approval number: 1076-0114.

Type of Review: Renewal.

Description: These eligibility application forms are mandatory in determining a student's eligibility for educational services. This collection is at no cost to the public.

Total Number of Respondents: 2,281.

Total Number of Annual responses: 3,943.

Total Annual Burden hours: 15 minutes per response \times 3,943 annual responses = 986 hours.

Dated: October 1, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02-25619 Filed 10-7-02; 8:45 am]

BILLING CODE 4310-NM-P 4310-TS-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on these applications must be received, at the address given below, by November 7, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist). Telephone: 404/679-4176; Facsimile: 404/679-7081.

FOR FURTHER INFORMATION CONTACT: Victoria Davis, Telephone: 404/679-4176; Facsimile: 404/679-7081.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to

"*victoria_davis@fws.gov*." Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**).

Finally, you may hand deliver comments to the Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Applicant: Jeff S. Glitzenstein, South Carolina Native Plant Society, Tallahassee, Florida, TE059092-0.

The applicant requests authorization to remove and reduce to possession cuttings and seeds of *Lindera melissifolia* (pondberry) for the purposes of initiating colonies in the Francis Marion National Forest. The proposed activities will take place in the Francis Marion National Forest, Charleston and Berkeley Counties, South Carolina.

Applicant: United States Army Corps of Engineers Research and Development Center, Dr. Andrew C. Miller, Vicksburg, Mississippi, TE060818-0.

The applicant requests authorization to take (survey, capture, and translocate) approximately 3,000 endangered fat pocketbook mussels (*Potamilus capax*)

from Stateline Outlet Ditch, Mississippi County, Arkansas. The applicant has requested to relocate mussels from the dredge site to other suitable sites in the river.

Applicant: United States Army Corps of Engineers Research and Development Center, Dr. Andrew C. Miller, Vicksburg, Mississippi, TE060835-0.

The applicant requests authorization to take (survey, capture, and translocate) by clamshell dredging the endangered orangefoot (pearlymussel) pimpleback (*Pletobasus cooperianus*) and the pink (pearlymussel) mucket (*Lampsilis abrupta*). Clamshell dredging is proposed as an experimental technique to minimize mussel mortality. The proposed activity will occur in the Tennessee River navigation channel near Diamond Island, Hardin County, Tennessee.

Applicant: Arkansas Tech University, Joseph N. Stoekel, Russellville, Arkansas, TE060875-0.

The applicant requests authorization to take (survey, handle, identify, examine, release, and collect voucher specimens and relics) the fat pocketbook mussel (*Potamilus capax*) while conducting presence and absence surveys. The surveys will be conducted at Old Frenchman's Bayou and ditch number 1 in Mississippi and Critendon counties, Arkansas.

Applicant: Natural Resources Conservation Service, James David Ellis, Little Rock, Arkansas, TE059043-0.

The applicant requests authorization to take (survey, capture, tag, mark, and release) the American burying beetle (*Nicrophorus americanus*) while conducting presence and absence surveys to determine if the species is present in the South Logan Counties Water Supply project area. The proposed activities will occur in Logan and Scott Counties, Arkansas.

Applicant: Ichauway, Inc. d.b.a. Joseph W. Jones Ecological Research Center, Newton, Georgia, TE059033-0.

The applicant requests authorization to remove and reduce to possession seeds of *Lindera melissifolia* (pondberry) to determine the role of seed predation, longevity of seeds, and the effects of leaf litter on seed germination in order to promote sexual reproduction. The proposed activities will take place in the Francis Marion National Forest, Charleston and Berkeley Counties, South Carolina and the Delta National Forest, Sharkey County, Mississippi.

Applicant: Dr. William D. Pearson, University of Louisville, Louisville, Kentucky, TE059028-0.

The applicant requests authorization to take (survey, capture, and release) the

Kentucky cave shrimp (*Palaemonias ganteri*) to determine presence and absence and to gather population data while conducting long term monitoring of the aquatic fauna in subterranean streams of Mammoth Cave National Park. The proposed activities will take place in Roaring River, Echo/Styx River, Mystic River, Owl cave, Eyeless Fish Trail, and Golden Triangle streams within the Mammoth Cave National Park, Edmonson County, Kentucky.

Applicant: CCR Environmental, Inc., Mr. Christian M. Crow, Atlanta, Georgia, TE059008-0.

The applicant requests authorization to take (survey, capture, and release) the fat threeridge mussel (*Amblema neislerii*), shinyrayed pocketbook (*Lampsilis subangulata*), gulf moccasinshell (*Medionidus penicillatus*), oval pigtoe (*Pleurobema pyriforme*), and purple bankclimber (*Elliptoides sloatianus*) to determine the absence or presence in various streams, including bridge and roadway crossings throughout Georgia.

Applicant: Kenneth Neil Medlin, North Carolina Department of Transportation, Clayton, North Carolina, TE061055.

The applicant requests authorization to take (survey, capture, and release) the Cape Fear shiner (*Notropis mekistocholas*) and the spotfin chub (*Cyprinella monacha*) while conducting presence and absence surveys when potential transportation projects occur. The proposed activities will occur in the Cape Fear River Basin and the Tennessee River Basin, North Carolina.

Applicant: International Carnivorous Plant Society, Barry Rice, Fullerton, California, TE060992-0.

The applicant requests authorization to remove and reduce to possession seeds of *Sarracenia jonesii* (mountain sweet pitcher plant), *Sarracenia oreophila* (green pitcher plant), *Sarracenia alabamensis* (Alabama canebrake pitcher plant), and *Pinguicula ionantha* (Godfrey's butterwort) for interstate commerce distribution in the United States.

Applicant: International Carnivorous Plant Society, Barry Rice, Fullerton, California, TE061005-0.

The applicant requests authorization to remove and reduce to possession seeds of *Sarracenia jonesii* (mountain sweet pitcher plant), *Sarracenia oreophila* (green pitcher plant), *Sarracenia alabamensis* (Alabama canebrake pitcher plant), and *Pinguicula ionantha* (Godfrey's butterwort) interstate commerce distribution in the United States. The seeds would be germinated and grown under the expert care and when they are

approximately two years old, the vigorous individuals would be sold.

Applicant: United States Army Corps of Engineers-Memphis District, David L. Reece, Memphis, Tennessee, TE061069-0.

The applicant requests authorization to take (survey, collect, and replace at point of collection) the endangered orangefoot (pearlymussel) pimpleback (*Pletobasus cooperianus*), pink (pearlymussel) mucket (*Lampsilis abrupta*), fat pocketbook mussel (*Potamilus capax*), Turgid-blossom pearly mussel (*Epioblasma turgidula*), and ring pink mussel (*Obovaria retusa*) while conducting presence and absence surveys. The proposed activities will occur within the boundaries of the U.S. Army Corps of Engineers-Memphis District in the following states: Arkansas, Tennessee, and Kentucky.

Applicant: Dennis R. DeVries, Auburn University, Auburn, Alabama, TE061284-0.

The applicant requests authorization to take (survey, collect, measure, count, and replace at point of collection) the endangered Tulotoma snail (*Tulotoma magnifica*) while conducting presence and absence surveys. The proposed activities will occur in the Coosa River drainage, Alabama.

Dated: September 18, 2002.

Christine E. Eustis,

Acting Regional Director, Region IV.

[FR Doc. 02-25513 Filed 10-7-02; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Incidental Take Permits for the Alabama Beach Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; announcement of scoping meeting.

SUMMARY: The Fish and Wildlife Service announces its intent to prepare an environmental impact statement regarding the proposed Gulf Highlands Area Habitat Conservation Plan (HCP) and issuance of two permits for the incidental take of the Alabama beach mouse. These permits are for the construction, occupancy, use, operation, and maintenance of two residential/recreational condominium projects-the Gulf Highlands Condominiums by Gulf Highlands LLC and Beach Club West by Fort Morgan Paradise Joint Venture on the Fort Morgan Peninsula, in Baldwin County, Alabama. We will also hold a public scoping meeting/hearing on

October 29, 2002, at Gulf State Park in Gulf Shores, Alabama.

DATES: Written comments concerning our intent to prepare an EIS and concerning the HCP should be received on or before November 22, 2002. The scoping meeting will be held on October 29, 2002, from 4 p.m. to 8 p.m.

ADDRESSES: Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office at Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: Endangered Species Permits,) or Field Office, U.S. Fish and Wildlife Service, 1208-B Main Street, Daphne, AL 36526 (Attn: Ms. Barbara Allen). Documents will be available for public inspection by appointment during normal business hours at the regional office. Written data or comments concerning the HCP and our notice of intent to prepare an EIS should be submitted to the Regional Office. Please reference permit numbers TE-007985-0 (Gulf Highlands) and TE-031307-0 (Fort Morgan Peninsula Joint Venture) in such comments, or in requests for documents.

The scoping meeting will be held at Gulf State Park, 20115 State Highway 135, Gulf Shores, Alabama. A court reporter will be present to record all comments, and all interested parties will be allowed to comment.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Valenta, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679-4144; or Ms. Barbara Allen, Fish and Wildlife Biologist, Daphne Field Office, (see **ADDRESSES** above), telephone: 334/441-5181, extension 33.

SUPPLEMENTARY INFORMATION: The proposed residential/recreational condominium developments will be located on approximately 196 acres in south Baldwin County, Alabama, between State Highway 180 and the Gulf of Mexico (Section 28, Township 9 South, Range 2 East) about twelve miles west of Highway 59 in Gulf Shores, Alabama, on the Fort Morgan Peninsula.

Some of the Applicants' future activities have the potential to impact species subject to protection under the Act, including the Alabama beach mouse (*Peromyscus polionotus ammobates*). Section 10(a)(1)(B) permits non-Federal landowners to take endangered and threatened species, provided the take is incidental to otherwise lawful activities and will not appreciably reduce the likelihood for the survival and recovery of the species in the wild, among other permit issuance criteria. An applicant for a permit under section 10 of the Act must

prepare and submit to the Service for approval a plan containing, among other things, a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for implementation of the plan will be provided.

The Applicants have initiated and continued discussions with the Service regarding the possibility of Permits and an associated HCP for their activities on lands to be covered by the Permits. General activities proposed for permit coverage include residential, commercial and industrial development, construction, and maintenance activities.

The Service previously considered the Applicants' HCP in an Environmental Assessment and issued a Finding of No Significant Impact. 67 FR 17089 (Apr. 9, 2002). That environmental analysis was challenged in an action for judicial review brought by Sierra Club and Friends of the Earth. The United States District Court for the Southern District of Alabama granted a preliminary injunction against any take of the Alabama beach mouse pursuant to the permits previously issued to Applicants. *Sierra Club and Friends of the Earth v. Norton*, 207 F. Supp. 2d. 1310 (S.D. Ala. 2002).

Subsequently, in light of the court's preliminary injunction, the Service determined to revisit the earlier NEPA analysis for this HCP and the issued permits. See Defendant's Motion for Voluntary Remand, *Sierra Club and Friends of the Earth v. Norton*, No. CV-02-0258-CB-C (S.D. Ala. Aug. 8, 2002). The Service has decided, and announces through this notice, its intent to review the proposed HCP and the environmental effects of issuing the permits through preparation of an EIS.

The environmental review will analyze the Applicants' proposed HCP as well as a full range of reasonable alternatives and the associated impacts of each. The Service is currently in the process of developing alternatives for analysis. The alternatives identified to date are as follows:

Alternative 1—No Action: The Service would not re-affirm the ITPs.

Alternative 2—Development According to Original Gulf Highlands Subdivision Plat: A portion of the Applicants' properties were originally platted and zoned for single family residential development by the Baldwin County Planning Commission. This development alternative involves development according to the original plat or by additional platting and subdivision of the lands.

Alternative 3—Development With Primary Features Occupying Full Width of the Escarpment: Alternative 3 consists of the residential high-rise building complexes placed atop the escarpment.

Alternative 4—Development Entirely North of the Escarpment: This alternative would involve development of residential condominium buildings and infrastructure approximately 300 feet north of the escarpment for both projects.

Alternative 5—Development of Portions of the Escarpment With a 325 ft. Habitat Corridor Between the Projects: Alternative 5 consists of the development of the same number of units, but placed on different portions of the escarpment and adjacent areas. This development configuration would result in the preservation of an undeveloped corridor of ABM habitat approximately 325 feet wide separating the individual developments and connecting the interior scrub areas with the designated critical habitat to the south of the developments.

Alternative 6—Development of Onsite Mitigation Including a 909-foot Corridor Connecting Adjacent Primary/Secondary Dunes and Escarpment to the Interior: This alternative increases the width of the undeveloped corridor described above and repositions the corridor to the west side of the property. This alternative provides for dedication of 105.5 acres of Applicant-owned lands into conservation status via covenants, conditions and restrictions attached to the property, and conditions of any ITP that might be issued.

Persons wishing to provide relevant information and comments regarding this activity should submit these to the above address. For information, please contact the individual identified above in the section entitled **FOR FURTHER INFORMATION CONTACT**.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR parts 1500 through 1508), and with other appropriate Federal laws and regulations, policies, and procedures of the Service for compliance with those regulations. It is estimated that the draft EIS will be available for public review in early 2003.

Dated: October 2, 2002.

Sam D. Hamilton,
Regional Director.

[FR Doc. 02-25505 Filed 10-7-02; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[OR-014-02-1652-HB; GP-2-300]

**Emergency Closure of Public Lands;
Klamath County, OR****AGENCY:** Bureau of Land Management,
Interior.**ACTION:** Emergency Closure of the
Willow Valley Road in Klamath County,
Oregon.**SUMMARY:** Notic is hereby given that the
Willow Valley Road, (41-14E-13), at the
Rock Creek Bridge, in T. 41 S., R. 15 E.,
Sec. 17, Willamette Meridan, Klamath
County, Oregon is temporarily closed to
vehicle operation from October 7, 2002
through November 29, 2002. The
closure is made under the authority of
43 CFR 8364.1. The purpose of this
emergency temporary closure is to
protect persons from potential harm
during bridge replacement.Any person who fails to comply with
the provisions of this closure order may
be subject to the penalties provided in
43 CFR 8360.0-7, which include a fine
not to exceed \$1,000 and/or
imprisonment not to exceed 12 months,
as well as the penalties provided under
Oregon State law.The public road temporarily closed to
public use under this order will be
posted with signs at points of public
access.**DATES:** This closure is effective from
October 7, 2002 through November 29,
2002.**ADDRESSES:** Copies of the closure order
and map showing the location of the
closed road is available for the Klamath
Falls Resource Area Office, 2795
Anderson Avenue, Building 25,
Klamath Falls, Oregon 97603.**FOR FURTHER INFORMATION CONTACT:**
Teresa A. Raml, Field Manager, Klamath
Falls Resource Area Office at (541) 883-
6916.

Dated: July 12, 2002.

Teresa A. Rami,*Field Manager, Klamath Falls Resource Area.*
[FR Doc. 02-25660 Filed 10-04-02; 10:58
am]**BILLING CODE 4310-33-M****DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

[AK-933-1410-ET; A-033717]

**Public Land Order No. 7540; Partial
Revocation of Public Land Order No.
2374; Alaska****AGENCY:** Bureau of Land Management,
Interior.**ACTION:** Public Land Order.**SUMMARY:** This order revokes a public
land order insofar as it affects
approximately 304.18 acres of public
lands withdrawn for military purposes
for the Department of the Air Force at
Port Moller Radio Relay Site, Alaska.
The lands are no longer needed for the
purpose for which they were
withdrawn. This action also allows the
conveyance of the lands to the State of
Alaska, if such lands are otherwise
available. Any lands described herein
that are not conveyed to the State will
continue to be subject to the terms and
conditions of Public Land Order No.
5186, as amended, and any other
withdrawal or segregation of record.**EFFECTIVE DATE:** October 8, 2002.**FOR FURTHER INFORMATION CONTACT:**
Robbie J. Havens, Bureau of Land
Management, Alaska State Office, 222
W. 7th Avenue, No. 13, Anchorage,
Alaska 99513-7599, 907-271-5477.**Order**By virtue of the authority vested in
the Secretary of the Interior by Section
204 of the Federal Land Policy and
Management Act of 1976, 43 U.S.C.
1714 (1994), and by Section 17(d)(1) of
the Alaska Native Claims Settlement
Act, 43 U.S.C. 1616(d)(1) (1994), it is
ordered as follows:1. Public Land Order No. 2374, which
withdrew public lands for military
purposes, is hereby revoked insofar as it
affects the following described lands:**Seward Meridian**

T. 48 S., R. 72 W.,

Three parcels more particularly described
as:*Tract A*Commencing at U.S.L.M.S. 1147, latitude
55°59'28" N., longitude 160°34'29.374" W.,
1927 N.A.D.;Thence S. 73°32'44" E., 16.040.33 feet to
Point "Site";Thence North 1,000 feet to the Point of
Beginning; thence

East, 1,000 feet;

South, 2,000 feet;

West, 2,000 feet;

North, 2,000 feet;

East, 1,000 feet to the Point of Beginning.

The area described contains 91.83 acres.

*Tract B*Commencing at U.S.L.M.S. 1147, latitude
55°59'28" N., longitude 160°34'29.374" W.,
1927 N.A.D.;Thence N. 30°18'42" E., 3,785.54 feet to the
Point of Beginning, thence

N. 59°32'30" W., 750 feet;

N. 30°27'30" E., 5,500 feet;

S. 59°32'30" E., 1,500 feet;

S. 30°27'30" W., 5,500 feet;

N. 59°32'30" W., 750 feet to the Point of
Beginning.

The area described contains 189.39 acres.

*Tract C*Commencing at U.S.L.M.S. 1147, latitude
55°59'28" N., longitude 160°34'29.374" W.,
1927 N.A.D.;Thence S. 73°32'44" E., 10,580 feet to the
Point of Beginning; thence

N. 83° E., 730 feet;

S. 7° E., 1,000 feet;

S. 83° W., 1,000 feet;

N. 7° W., 1,000 feet;

N. 83° E., 270 feet to the Point of
Beginning.

The area described contains 22.96 acres.

The areas described aggregate 304.18 acres.

2. The State of Alaska application for
selection made under Section 6(b) of the
Alaska Statehood Act of July 7, 1958, 48
U.S.C. note prec. 21 (1994), and under
Section 906(e) of the Alaska National
Interest Lands Conservation Act, 43
U.S.C. 1635(e)(1994), becomes effective
without further action by the State upon
publication of this public land order in
the **Federal Register**, if such lands are
otherwise available. Any lands not
conveyed will continue to be subject to
the terms and conditions of Public Land
Order No. 5186, as amended, and any
other withdrawal or segregation of
record.

Dated: September 13, 2002.

Rebecca W. Watson,*Assistant Secretary—Land and Minerals
Management.*

[FR Doc. 02-25576 Filed 10-7-02; 8:45 am]

BILLING CODE 4310-JA-P**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

[AK-933-1410-ET; F-07357]

**Public Land Order No. 7541; Partial
Revocation of Public Land Order No.
2550; Alaska****AGENCY:** Bureau of Land Management,
Interior.**ACTION:** Public Land Order.**SUMMARY:** This order revokes a public
land order insofar as it affects 55.31
acres of public land withdrawn for
airport purposes for the Federal
Aviation Administration. The land is no

longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State will be subject to Public Land Order No. 5180, as amended, and any other withdrawal or segregation of record.

EFFECTIVE DATE: October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1994), it is ordered as follows:

1. Public Land Order No. 2550, which withdrew public lands for airport purposes, is hereby revoked insofar as it affects the following described land:

Fairbanks Meridian

T. 1 S., R. 2 W.,

Sec. 23, NE $\frac{1}{4}$ NE $\frac{1}{4}$ excluding
NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,
E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,
E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, and
N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 24, W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$.

The area described contains 55.31 acres.

2. The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1994), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e)(1994), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Lands selected by, but not conveyed to, the State will be subject to Public Land Order No. 5180, as amended and any other withdrawal or segregation of record.

Dated: September 13, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02-25577 Filed 10-7-02; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-933-1410-ET; A-042420]

Public Land Order No. 7539; Partial Revocation of Public Land Order No. 2713, as Amended; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 30 acres of public land withdrawn for air navigation purposes for the Federal Aviation Administration at Talkeetna, Alaska. The land is no longer needed for the purpose for which it was withdrawn. The land is also classified for conveyance to Cook Inlet Region, Inc., under the Act of January 2, 1976, as amended. Any land described herein that is not conveyed will continue to be subject to the terms and conditions of Public Land Order No. 5186, as amended, and any other withdrawal or segregation of record.

EFFECTIVE DATE: October 8, 2002.

FOR FURTHER INFORMATION CONTACT:

Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1994), it is ordered as follows:

1. Public Land Order No. 2713, as amended, which withdrew public lands for air navigation purposes, is hereby revoked insofar as it affects the following described land:

Seward Meridian

T. 26 N., R. 4 W.,

Sec. 31, W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ and
NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$.

The area described contains 30 acres.

2. Subject to valid existing rights, the land is classified for conveyance to Cook Inlet Region, Inc., under the Act of January 2, 1976, as amended, 43 U.S.C. 1611 (note) (1994). Any land not conveyed will continue to be subject to the terms and conditions of Public Land Order No. 5186, as amended, and any other withdrawal or segregation of record.

Dated: September 13, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02-25579 Filed 10-7-02; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-010-1430-ET; FL-ES-051481]

Public Land Order No. 7542; Transfer of Jurisdiction; Florida

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies the Executive Order dated January 9, 1838 and transfers the administrative jurisdiction of 49.83 acres of land located at the Pensacola Naval Air Station from the Department of the Navy to the Department of Veterans Affairs for the expansion and operation of the Barrancas National Cemetery.

EFFECTIVE DATE: October 8, 2002.

FOR FURTHER INFORMATION CONTACT:

Duane Winters, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206, 601-977-5403.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the Executive Order dated January 9, 1838, which withdrew public domain land for the benefit of the United States Navy, is hereby modified to transfer administrative jurisdiction of the following described land from the Department of the Navy to the Department of Veterans Affairs, to manage as part of the National Cemetery System:

Tallahassee Meridian

T. 3 S., R. 30W.,

Tract 6.

The area described contains 49.83 acres in Escambia County.

2. The land described in Paragraph 1 remains withdrawn from all forms of appropriation and disposition under the public land laws, including the mining laws, but not from leasing under the mineral leasing laws.

Dated: September 13, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02-25578 Filed 10-7-02; 8:45 am]

BILLING CODE 4310-OJ-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

South Delta Improvements Program

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of extension of time for written comments on scope of environmental impact statement/environmental impact report (EIS/EIR).

SUMMARY: The Bureau of Reclamation is extending the public review period to October 31, 2002, for written comments on the scope of the EIS/EIR for the South Delta Improvements Program. The notice of intent for the EIS/EIR was published in the **Federal Register** on August 30, 2002 (67 FR 55870). The comment period was originally to end on October 4, 2002.

DATES: Written comments on the scope of the EIS/EIR should be submitted on or before October 31, 2002.

ADDRESSES: Written comments on the scope of the EIS/EIR should be sent to Mr. Dan Meier, Bureau of Reclamation, 2800 Cottage Way, MP-700, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Mr. Meier, Reclamation, at the above address, or by telephone at 916-978-5086 or TDD 1-800-735-2922; or Mr. Paul Marshall, Department of Water Resources, 1416 Ninth Street, Sacramento, CA 94236, or by telephone at 916-653-2118.

SUPPLEMENTARY INFORMATION: Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: September 26, 2002.

Frank Michny,

Regional Environmental Officer.

[FR Doc. 02-25506 Filed 10-7-02; 8:45 am]

BILLING CODE 4310-MN-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Alternatives for Meeting Water Needs in the Red River Valley, ND

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: On December 15, 2000, the 106th Congress passed the Dakota Water Resources Act of 2000, which was signed into law on December 21, 2000 (Public Law 106-554). Among other things, the Dakota Water Resources Act of 2000 (DWRA) states that, "the Secretary of the Interior shall conduct a comprehensive study of the water quality and quantity needs of the Red River Valley in North Dakota and possible options for meeting those needs" (Section 8(b)(1)). In addition, the DWRA states that, "pursuant to an agreement between the Secretary and State of North Dakota as authorized under section 19g) * * * the Secretary and the State of North Dakota shall jointly prepare and complete a draft environmental impact statement concerning all feasible options to meet the comprehensive water quality and quantity needs of the Red River Valley and the options for meeting those needs" (Section 8(c)(2)(A)).

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) and the State of North Dakota (ND) will jointly prepare this environmental impact statement (EIS). The State of North Dakota (ND) has designated the Garrison Diversion Conservancy District (GDCCD) to serve as the State lead in preparation of the EIS for the Red River Valley Water Supply Project. Reclamation, acting under the authority of the Secretary of the Interior, is the lead Federal agency. Cooperating agencies will be identified at a later date.

Reclamation and the GDCCD will use the NEPA compliance process to ensure that the public has opportunities to review and comment on long-term water supply and management alternatives for the Red River Valley Water Supply Project. Public comments are invited and encouraged regarding both the scope of environmental and

socioeconomic issues and alternative that should be evaluated in the EIS.

Reclamation and the GDCCD have scheduled six public scoping meetings in which Federal, State, local and tribal government agencies, non-governmental organizations, the public, and the international community are invited to participate in the open exchange of information and to submit comments on the proposed scope of the EIS. Each meeting will be preceded by a 2-hour open house during which Reclamation staff, GDCCD staff, and other study participants will provide information and answer questions.

DATES: See **SUPPLEMENTARY INFORMATION** section for the locations, dates, and times of the scoping meetings.

Written comments on the scope of the issues and alternatives to be evaluated in the EIS will be accepted and should be postmarked or e-mailed no later than December 16, 2002, to be most effective.

ADDRESSES: Written comments should be submitted to: Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck ND 58502.

FOR FURTHER INFORMATION CONTACT: Signe Snortland, Red River Valley Water Supply Project EIS, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck ND 58502; Telephone: (701) 250-4242 extension 3619; or FAX to (701) 250-4326. You may submit e-mail ssnortland@gp.usbr.gov or access the Red River Valley Water Supply Project web site at <http://www.usbr.gov/gp/dkao/rrvwsp.htm>.

SUPPLEMENTARY INFORMATION: In 1944, the U.S. Congress passed the Flood Control Act (the Missouri-Basin Pick Sloan Act), which authorized the construction of dams on the Missouri River and its tributaries. The Garrison Diversion Unit (GDU) was authorized in 1965, and construction began in 1967. The project was designed to divert Missouri River water to central and eastern ND for irrigation; fish and wildlife enhancement; municipal, rural, and industrial (MR&I) water supply; and recreation development. Most of the currently authorized principal supply works have been completed, except for about a 20-mile reach between the end of the McCluskey Canal and beginning of the New Rockford Canal.

The project was reformulated in 1986 to reduce the emphasis on irrigation and increase the emphasis on meeting the MR&I water needs throughout ND. The 1986 Reformulation Act authorized a Sheyenne River water supply and release feature and water treatment plant capable of delivering 100 cubic feet per second of water to eastern ND.

The authorization for the GDU was amended again in December 2000 by DWRA. The DWRA requires that an EIS and feasibility-level study be prepared to aid decision-making on a preferred alternative for meeting water needs in the Red River Valley in North Dakota.

Development of a reliable water supply for the Red River Valley has been a subject of great interest to local residents, along with government agencies and entities concerned with water management and development. Although rivers in eastern ND such as the Red and Sheyenne rivers are prone to flooding and excessive runoff, they also experience low flow and drought conditions such as those that occurred in the 1930's and 1980's.

In 1994, Reclamation initiated an appraisal-level (preliminary) assessment of MR&I water needs in the Red River Valley as an outcome of the ND Water Management Collaborative Process. That study was completed in two phases. The first phase was further subdivided into parts A & B. Phase IA compared the existing and projected future MR&I water needs in the Red River Valley with the surface water flows and groundwater resources available to meet those needs. That report, completed in April 1998, concluded that significant shortages could occur during droughts if no action is taken.

The Phase IB report provided an evaluation of seasonal instream flow needs for water quality and maintenance of aquatic life in the Sheyenne and Red rivers. That report was finalized in August 1999.

The Phase II report presented a range of preliminary alternatives to meet the shortages identified in the Phase IA report. These alternatives included both in-basin and out-of-basin water supplies along with water conservation and a variety of management and operational techniques.

Purpose of and Need for the Federal Action

The Red River Valley Water Supply Project EIS will evaluate alternative ways to meet the comprehensive "water quality and quantity needs of the Red River Valley in North Dakota" [DWRA Section 8(b)(1)]. The needs are defined as municipal, rural, and industrial supplies; water quality; aquatic environment; recreation; and water conservation measures [Section 8(b)(2)].

Proposed Alternatives

As required by Council on Environmental Quality (CEQ) implementing regulations (40 CFR 1502.2(e)), a full range of reasonable alternatives will be evaluated in the EIS.

These alternatives will include No Action and development of in-basin and out-of-basin water sources. The EIS will evaluate potential environmental impacts of specific alternatives together with engineering and socioeconomic considerations. A preferred alternative has not been identified at this time.

Eight preliminary alternatives, including No Action, were described in the Phase II Needs Assessment. These alternatives were:

- No Action. This alternative represents the reasonably foreseeable future condition if a Red River Valley Water Supply Project is not constructed.
- Construction of a new water supply reservoir on the Sheyenne River near Kindred.
- Raising the height of Baldhill Dam on the Sheyenne River near Valley City to increase water storage.
- Development of groundwater resources including purchase of existing rights, new well fields, desalinization, and aquifer storage and recovery.
- Importation of Missouri River water via a pipeline from Bismarck to Fargo.
- Importation of Missouri River water via a pipeline from Lake Oahe south of Bismarck to the vicinity of Wahpeton.
- Importation of Missouri River water to the upper Sheyenne River utilizing existing GDU principal supply works.
- Importation of Missouri River water via a system of closed pipelines from the GDU principal supply works to cities, industries, and rural water systems.
- Other potential water sources including Minnesota sub-basins and Devils Lake may be evaluated in detail in the EIS. Comments or suggestions on these alternatives or suggestions of other alternatives that should be considered are welcome.

Preliminary Identification of Environmental Issues

The following issues have been tentatively identified for analysis in the EIS. This list is preliminary and is intended to facilitate public comment on the scope of this EIS. It is not intended to be all-inclusive nor does it imply any predetermination of potential impacts. Reclamation and the GDCD invite comments on this list:

- Impacts on streams and lakes, groundwater, floodplains, wetlands, and on water uses and quality.
- Impacts on aquatic and terrestrial plants and animals and their habitats including species that are federally or State-listed as threatened or endangered, proposed, candidate, or of special concern and/or critical habitat.
- Potential impacts from the transfer of biota, including parasites and

pathogens, between the Missouri River basin and the Hudson Bay basin.

- Potential impacts to Canadian waters due to transfer of harmfuliota or changes in water quality or quantity.
- Potential cumulative environmental impacts to the Missouri River from past, present, and foreseeable future withdrawals.
- Potential cumulative environmental impacts to the Sheyenne and Red rivers, including effects of the proposed Devils Lake outlet as well as other reasonably foreseeable discharges or withdrawals.
- Impacts on cultural resources such as historic, archaeological, architectural, or traditional properties.
- Socioeconomic impacts on affected communities related to long-term water supply and management.
- Environmental justice, particularly whether or not water management activities have a disproportionately high and adverse effect on minority and low-income populations.
- Compliance with all applicable Federal, State, and local statutes and regulations and with international agreements and required Federal and State environmental permits, consultations, and notifications.
- Compliance with all applicable Executive Orders.

Timing

Reclamation and the GDCD plan to issue the draft EIS by December 2005. Reclamation and the U.S. Environmental Protection Agency will separately publish notices of availability of the draft EIS in the Federal Register. Reclamation and GDCD will publicize the availability of the draft EIS in other media and will provide opportunities for Federal, State, local and tribal government agencies, non-governmental organizations, the general public, and the international community to participate in additional information forums and to submit comments.

Locations, Dates and Times of Scoping Meetings

- Monday, October 28, 2002, 7 p.m., Fargo, North Dakota, Fargo Civic Auditorium, 207 4th Street North, lower level, Room A
- Tuesday, October 29, 2002, 7 p.m., Valley City, North Dakota, AmericInn Hotel, 330 Wintershow Road
- Wednesday, October 30, 2002, 7 p.m., Grand Forks, North Dakota, Grand Forks City Council Chambers, 225 North 4th Street, third floor
- Wednesday, November 6, 2002, 7 p.m., Pembina, North Dakota, Pembina State Museum, Exit 215 off of Interstate 29, 805 Highway 59
- Thursday, November 7, 2002, 7 p.m., Wahpeton, North Dakota, Wahpeton

City Hall, 1900 4th Street North,
Community Room

- Friday, November 8, 2002, 1:00 p.m.,
Bismarck, North Dakota, Doublewood
Hotel, Interstate 94 and Exit 159

Issues raised at the scoping meetings will be documented in the Scope of Statement (SOS) for the Red River Valley Water Supply Project EIS. The objectives of this report are to summarize the essence of the comments in a clear and concise manner and to accurately portray the scope of the EIS. The SOS will be distributed to public libraries near the meeting locations, posted on Reclamation's Red River Valley Water Supply Project EIS web page, and mailed upon request.

Public Disclosure Statement

Comments received in response to this notice will become part of the administrative record for this project and are subject to public inspection. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: September 12, 2002.

Maryanne C. Bach,

Regional Director, Great Plains Region.

[FR Doc. 02-25514 Filed 10-7-02; 8:45 am]

BILLING CODE 4310-MN-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 16, 2002, a proposed consent decree in *United States v. Buena Vista Mines, Inc., et al.*, Civil Action No. 98-7226 SVW (RNBx), was lodged with the United States District Court for the Central District of California.

In this action, brought under Sections 106 and 107 of the Comprehensive Environmental Response,

Compensation, and Liability Act, 42 U.S.C. §§ 9606, 9607, the United States sought reimbursement of response costs incurred by the U.S. Environmental Protection Agency ("EPA") at the Buena Vista/Klau Mine Site near Paso Robles California, as well as civil penalties and treble damages arising from the failure of defendants Buena Vista Mines, Inc. ("BVMI"), Harold J. Biaggini, and Edward C. Biaggini, III to comply with an EPA administrative clean-up order. The consent decree provides for payments of \$500,000 from the defendants and \$100,000 from third-party defendant County of San Luis Obispo and in addition, provides that the United States will receive the major portion of all proceeds of any future BVMI land sales. In exchange for the settlement payments, the settling parties will receive a site-wide covenant-not-to-sue, subject to certain reservations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Buena Vista Mines, Inc., et al.*, D.J. Ref. No. 90-5-1-1-4467/1.

The consent decree may be examined at the offices of U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or by faxing a request to Tonia Fleetwood, fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy, please enclose a check in the amount of \$10.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02-25517 Filed 10-7-02; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act and Resource Conservation and Recovery Act

Pursuant to 28 CFR 50.7, notice is hereby given that on October 2, 2002, a Consent Decree in *United States v. Environmental Services, LLC.*, Case No. IP 00-0538-C-B/S, was lodged with the

United States District Court for the Southern District of Indiana Indianapolis Division.

Under this Consent Decree, Heritage Environmental Services LLC. ("Heritage") will pay a penalty of \$360,000 to the United States for violations of section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b) as amended ("CAA") and section 3008(a) of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. 6928(a) as alleged in the Complaint in this action in connection with two of Heritage's hazardous waste treatment, storage, and disposal facilities located in Indianapolis, Indiana and Lemont, Illinois.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Heritage Environmental Services, LLC.*, D.J. Ref. 90-5-2-1-06331.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Indiana, United States Courthouse, 46 East Ohio Street, 5th Floor, Indianapolis, Indiana 46204, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611. In requesting a copy, please enclose a check in the amount of \$6.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02-25516 Filed 10-7-02; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 C.F.R. § 50.7 notice is hereby given that on September 16, 2002, a proposed Consent Decree in *United States v. Wolcottville Sand and Gravel Corporation, d/b/a London Aggregates*, No. 98-CV-74192 (E.D. Mich.), and *PIRGIM Public Interest Lobby v. Wolcottville Sand and Gravel Corporation, d/b/a London Aggregates*,

No. 98-73730 (E.D. Mich.) was lodged with the United States District Court for the Eastern District of Michigan.

The United States' complaint sought injunctive relief and civil penalties for Wolcottville's violations of the conditions and limitations of its National Pollutant Discharge Elimination System ("NPDES") permit, issued by the State of Michigan pursuant to CWA Section 402, 33 U.S.C. 1342, at Wolcottville's limestone quarry in Milan, Monroe County, Michigan. Under the proposed consent decree, Wolcottville will modify its mining operations such that it will be able to eliminate all discharges at the quarry and surrender its National Pollution Discharge Elimination System permit. Wolcottville will also pay \$75,000 to resolve the United States' claim for civil penalties, perform certain supplemental environmental projects at a cost of \$360,000 in partial mitigation of the United States' civil penalty claims, and undertake two restoration projects in settlement of the citizen plaintiffs' claims.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044-7611, and should refer to *United States v. Wolcottville Sand and Gravel Corporation, d/b/a London Aggregates*, No. 98-CV-74192 (E.D. Mich.), D.J. Ref. 90-5-1-1-4461.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, 211 W. Fort Street Detroit, Michigan 48226-3211 (contact Assistant United States Attorney Mary Rigdon, 313-226-9100), and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago Illinois (contact Assistant Regional Counsel Richard Clarizio (312-886-0559)). A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing a request to Tonia Fleetwood, fax no. 202-616-6584, telephone confirmation number 202-514-1547. In requesting a copy, please enclose a check in the amount of \$15.25 (25 cents

per page reproduction cost) payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02-25518 Filed 10-7-02; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933—National Center for Manufacturing Sciences

Notice is hereby given that, on August 28, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Center for Manufacturing Sciences, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ferro Corporation, Washington, PA; FOBA North American Laser, Lee's Summit, MO; HY-Tech Research Corporation, Radford, VA; JWH Group, Inc., Peninsula, OH; Monode Marking Products, Inc., Mentor, OH; Motorsoft, Inc., Lebanon, OH; RLW, Inc., State College, PA; Robotic Vision Systems, Inc. (RVSI), Canton, MA; Rockwell Automation, Inc., Milwaukee, WI; Spatial Integrated Systems, Inc. (SIS), Rockville, MD; Telesis Technologies, Inc., Rosewell, GA; and Waterjet Tech, Inc., St. Louis, MO have been added as parties to this venture. Also, Hydrogen Technology Applications, Clearwater, FL; Carnegie Mellon Research Institute, Pittsburgh, PA; Cybernet Systems Corporation, Ann Arbor, MI; ESD, The Engineering Society of Detroit, Southfield, MI; Hurco Companies, Inc., Indianapolis, IN; Information Transport Associates, Inc., Annapolis, MD; IntelliSeek, Inc., Cincinnati, OH; LMI Automotive, Windsor, Ontario, Canada; Metal Finishing Suppliers Association, Inc., Herndon, VA; Michigan Manufacturing Technology Center, Plymouth, MI; MicroDexterity Systems, Inc., Carbondale, CO; Minority Sub-Contractors Center, Inc., Clairton, PA; Primavera Systems, Inc., Bala Cynwyd, PA; Quantum Consultants, Inc., East Lansing, MI; Savi Technology, Inc., St. Charles, MD; Setco Industries, Inc.,

Novi, MI; SMART Technologies, Inc., Calgary, Alberta, Canada; Southwest Research Institute, San Antonio, TX; Structural Dynamics Research Corporation, Milford, OH; Trellis Software & Controls, Inc., Rochester Hills, MI; and Triton Systems, Inc., Chelmsford, MA have been dropped as parties to this venture.

Bresson, Rupp, Lipa & Company, Ann Arbor, MI has changed its company name to Knovalent, Inc.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and National Center for Manufacturing Sciences, Inc. intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, National Center for Manufacturing Sciences, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on May 3, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 8, 2002 (67 FR 45150).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02-25520 Filed 10-7-02; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection Comments Requested

ACTION: 60-day notice of information collection under review: reinstatement, with no change, of a previously approved collection for which approval has expired; Victim Assistance Grant Program Performance Report.

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 9, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Celestine Williams (202) 616-3565, Office for Victims of Crime, Office of Justice Programs, US Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, With Change, of a Previously Approved Collection for Which Approval has Expired.

(2) *Title of the Form/Collection:* Victims of Crime Act, Victim Assistance Grant Program, Performance Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: OJP ADMIN Form 739/4 (REV. 8-99). Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State government. Other: None. This form will be used to allow the director of OVC to collect performance data from recipients of VOCA victim assistance grant fund.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 57

respondents will complete an estimated 20 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,197 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, D.C. 20530.

Dated: October 3, 2002.

Brenda E. Dyer,

*Department Deputy Clearance Officer,
Department of Justice.*

[FR Doc. 02-25613 Filed 10-7-02; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review; new collection; Bureau of Justice Assistance, Southwest Border Prosecution Initiative.

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 9, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact, Robert Watkins Program Manager, Bureau of Justice Assistance, Office of Justice Programs, US Department of Justice, 810 Seventh Street NW., Washington, DC 20531 (202) 514-3447.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Bureau of Justice Assistance, Southwest Border Prosecution Initiative.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Office of Justice Programs, US Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local Government. This information will assist BJA in determining program eligibility and payment levels for select units of general government in Texas, Arizona, New Mexico and California. It will also provide contact and banking information for purposes of ongoing communication and federal payments resulting from submitting and approved online, Internet-based applications. The respondents will be the chief executive officers or their designees from local governments located in the four states.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 250 respondents will complete an application for benefits. The estimated amount of time required for the average respondent to respond is between 2 and 10 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,500 burden hours annually associated with this information collection.

If additional information is required contact: Brenda E. Dyer, Department

Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 3, 2002.

Brenda E. Dyer,

*Department Deputy Clearance Officer,
Department of Justice.*

[FR Doc. 02-25614 Filed 10-7-02; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP)—1363]

Office of Juvenile Justice and Delinquency Prevention: Meeting of the Coalition of Juvenile Justice

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is announcing the meeting of the Coalition for Juvenile Justice. The purpose of this meeting is to discuss and adopt recommendations from members regarding the committee's responsibility to advise the OJJDP Administrator, the President, and the Congress, about state perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention.

DATES: The meeting dates are:

1. Thursday, November 7, 2002, 9 a.m. to 4:30 p.m. (ET).
2. Friday, November 8, 2002, 9 a.m. to 4:15 p.m. (ET).
3. Saturday, November 9, 2002, 9 a.m. to 5 p.m. (ET)
4. Sunday, November 10, 2002, 8 a.m. to 1 p.m. (ET).

ADDRESSES: All meetings will be held at the Eden Roc Renaissance Resort, 4525 Collins Avenue, Miami Beach, Florida 33140; Telephone: 305-531-0000; Fax: 305-674-5537.

FOR FURTHER INFORMATION CONTACT: For information about how to attend this meeting (or to submit written questions (optional)), contact Freida Thomas, 810 7th Street, NW., Washington, DC 20531; Telephone: 202-307-5924 (This is not a toll-free number); Fax: 202-307-2819; e-mail: Freida@ojp.usdoj.gov.

SUPPLEMENTARY INFORMATION: The Coalition of Juvenile Justice, established pursuant to section 9 of the Federal Advisory Committee Act, (5 U.S.C. App. II), is meeting to carry out its advisory

functions under section 5601 of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C., as amended.

This meeting will be open to the public.

Dated: September 26, 2002.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 02-25597 Filed 10-7-02; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10958, et al.]

Proposed Exemptions; Fidelity Management Trust Company and Its Affiliates (Collectively Fidelity)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to

submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: "moffittb@pwba.dol.gov", or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Fidelity Management Trust Company and Its Affiliates (Collectively Fidelity), Located in Boston, Massachusetts

[Application No. D-10958]

Proposed Exemption

I. Covered Transactions

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of ERISA and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code,

shall not apply, to certain lines of credit (the Line of Credit or Lines of Credit), and the Loan and repayment of funds, including accrued interest, thereunder (the Loan or Loans), involving certain employee benefit plans (the Plan or Plans) with respect to which Fidelity acts as directed trustee, investment manager or other administrative service provider.

II. General Conditions

(a) Each Loan is made to the Plan in connection with the administration of a unitized fund (Unitized Fund) as defined in section III (e) in order to facilitate redemptions from the Unitized Fund.

(b) Each Line of Credit will be negotiated by Fidelity on behalf of the Plan with a bank, as defined under the Investment Advisers Act of 1940, as amended, having total assets of at least \$5 billion (the Lender or Lenders);

(c) Each Loan is initiated, accounted for and administered by Fidelity, which will monitor the transactions on behalf of the Plans to ensure that the terms and conditions of the exemption are met at all times;

(d) The Line of Credit provides that each Loan thereunder, including accrued interest thereon, will be repaid by the Unitized Fund promptly in the ordinary course of business upon settlement of the transaction that triggered the need for the Loan;

(e) The maximum amount loaned with respect to a Unitized Fund on any business day that a Loan is initiated does not, after the Loan is made, exceed 25% of the total fair market value of the Unitized Fund (such value determined as of the most recent close of the New York Stock Exchange or as otherwise provided in the applicable Line of Credit, provided such determination is substantially contemporaneous with the Loan);

(f) The fair market value of the assets in the Unitized Fund is determined by an objective method specified in the Line of Credit;

(g) The Lender's recourse with respect to any Loan from a Unitized Fund is limited to the assets of such Unitized Fund. No commitment fees, or commissions are paid by the Plan and no compensating balance is required by the Lenders in connection with these loans. Any set-off will be limited to the assets of the Unitized Fund borrowing the funds;

(h) Interest payable by the Plan on each Loan is based on rates quoted to Fidelity by the Lenders under the Lines of Credit and accepted by Fidelity on behalf of the Plan in accordance with the Lines of Credit;

(i) The Plan enters into a written agreement with Fidelity pursuant to which Fidelity is authorized to borrow on behalf of the Plan. Prior to borrowing on behalf of a Plan pursuant to this exemption, Fidelity provides the Plan with written notice explaining the Line of Credit program. The notice shall state that Fidelity agrees to act as a fiduciary on behalf of the Plan in connection with the following activities involving the Line of Credit agreements with the Lenders: the negotiation of the Plan's participation in the Line of Credit agreements; the negotiation of interest rates; the terms of the Loans, and the terms of repayment under the Lines of Credit agreements. The notice shall set forth Fidelity's objective methodology for allocating favorable interest rates or credit availability equitably among those Unitized Funds seeking to borrow under the Line of Credit agreements on any given day, *i.e.*, "the applicable ordering rules and limitations." Each notice shall also address under what circumstances Fidelity may exclude the Plan from participation in the program, either temporarily or permanently;

(j) Fidelity, on behalf of the Plan, enters into a written agreement with each of the Lenders offering these Line of Credit Agreements to the Plan. The agreement shall address, among other things, the maximum Line of Credit available, the terms for the Loan and repayment, the formula or method for determining the interest rate payable with respect to each Loan, and the conditions for terminating the agreement;

(k) The Plan may elect to terminate participation in the Lines of Credit at any time, without penalty and subject to the Plan's repayment of any outstanding Loan;

(l) No later than 15 business days after month end, Fidelity shall provide the Plan Sponsor of each Plan that has any outstanding Loan during a calendar month with a written report showing the Plan's outstanding Loans on each day during such month, the amount repaid on each such day, the interest rate and the amount of interest paid on each such day, the aggregate balance of all Loans outstanding on the last business day of such month and the aggregate amount of interest paid during such month;

(m) The Loans are made on terms at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party;

(n) Each Lender is not related to Fidelity and is a party in interest (including a fiduciary), solely by reason of providing services to the Plan, or solely by reason of a relationship to a

service provider to the Plan described in section 3(14)(F), (G), (H) or (I) of the Act;

(o) The agreements and the any loans contemplated thereunder are not a part of an agreement, arrangement, or understanding designed to benefit any party in interest with respect to any plan;

(p) No fees, or other compensation are paid to Fidelity in connection with the Loans by either the Plan or the Lenders;

(q) Where a Unitized Fund covered by this exemption invests in employer securities, such securities constitute "qualifying employer securities" as defined in section 407(d)(5) of the Act (QES) for which market quotations are readily available from independent sources within the meaning of Rule 17a-7, of the Investment Advisers Act of 1940, 17 CFR 270.17a-7. The exemption shall also apply to convertible preferred stock that qualifies as QES and is convertible, under an objective formulation, into securities for which market quotations are readily available as described above.

(r) Where a Unitized Fund, other than an employer securities fund or a stable value fund, invests directly or indirectly in securities, no less than 75 percent of such securities are securities for which market quotations are readily available from independent sources, within the meaning of Rule 17a-7, of the Investment Advisers Act of 1940, 17 CFR 270.17a-7;

(s) Fidelity maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons described in paragraph (t) to determine whether the conditions of this exemption have been met, except that—
(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Fidelity, such records are lost or destroyed prior to the end of such six year period; and

(2) No party in interest, other than Fidelity, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by sections 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (t);

(t)(1) Except as provided in paragraph (t)(2) and notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (s) are unconditionally available for examination during normal business hours by—

(A) Any duly authorized employees or representatives of the Department or the Internal Revenue Service;

(B) Any fiduciary of the Plan or any duly authorized employee or representative of such fiduciary;

(C) Any employer of participants and beneficiaries in the Plan and any employee organization whose members are covered by the Plan, or any authorized employee or representative of these entities; and

(D) Any participant or beneficiary of the Plan or any duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described above in paragraph (t)(1)(B), (C) or (D) shall be authorized to examine the trade secrets of Fidelity or commercial or financial information that is privileged or confidential;

(3) Should Fidelity refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (t)(2) above, Fidelity shall, by the close of the thirtieth (30th) day following the request, provide a written or electronic notice advising that person (i) of the reasons for the refusal and (ii) that the Department may request such information.

III. Definitions

(a) "Fidelity" refers to Fidelity Management Trust Company and its affiliates.

(b) "Affiliate" means (i) any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (ii) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (iii) any corporation or partnership of which such other person is an officer, director or partner.

(c) "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) Fidelity is "related" to a Lender if the Lender (or a person controlling, or controlled by, the Lender) owns a five percent or more interest in Fidelity or if Fidelity (or a person controlling, or controlled by, Fidelity) owns a five percent or more interest in the Lender. For purposes of this definition:

(1) The term "interest" means with respect to ownership of an entity (A) the combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation, (B) the capital interest or the profits interest of the entity if the entity is a partnership, or (C) the beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority (A) to exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or (B) to dispose of or to direct the disposition of such interest.

(e) A "Unitized Fund" is a fund that, to facilitate trading and/or accounting, has established "units" representing undivided interests in all of the assets of such fund.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption shall be effective as of the date the final exemption is published in the **Federal Register**.

Summary of Facts and Representations

1. Fidelity Management Trust Company, a Massachusetts trust company, is a subsidiary of FMR Corp., the parent of a group of companies known as Fidelity Investments®. Fidelity Investments is one of the nation's largest mutual fund companies and a leading provider of financial services. It provides a wide range of investment management, brokerage, administrative and other financial services and products to both retail and institutional customers. Fidelity Investments manages in the United States and Canada approximately 322 mutual funds with aggregate assets, as of December 31, 2001, in excess of \$815 billion. In addition, it manages more than \$68 billion of assets other than mutual funds, including separate accounts and collective investment funds. Fidelity provides trustee, custodial, investment management, participant recordkeeping and/or other related services to employee benefit plans, including the Plans.

2. The Plans are qualified plans under section 401(a) of the Code and are employee benefit plans within the meaning of section 3(3) of ERISA. Substantially all of the Plans are defined contribution plans that permit each Plan participant to allocate his or her account balance among a number of investment options available under the Plan. These options may include mutual funds, separately-managed accounts, bank-maintained collective investment funds (including so-called stable value funds) and/or company stock funds. Moreover, many of the Plans operate in a so-called "daily environment"; *i.e.*, each Plan participant can elect to make investment transfers on any business day and the transfer will generally be effected at the close of business on that day.

3. The Applicant represents that from time to time, the Plans find themselves in the position where, incidental to their

ordinary operation, there is a cash shortfall that creates a short-term liquidity problem. Most frequently this occurs when amounts are to be withdrawn from a unitized investment option (*e.g.*, to facilitate benefit distributions, participant loans and/or participant-directed transfers to other investment options) at a time when such investment option does not hold sufficient cash to meet the withdrawal need (each such investment option, a "Unitized Fund" and collectively, the "Unitized Funds"). In such circumstances, the Plan must either borrow the requisite cash on a short-term basis until securities can be liquidated and cash proceeds obtained (this will typically take three business days) or delay the withdrawal from the particular Unitized Fund until the needed cash is available. The Applicant represents that, since this latter alternative is at odds with the participants' expectation that the Plan will operate in a "daily environment," the former alternative (*i.e.*, short-term Loan) is the preferred choice for dealing with this type of situation.

4. It would be possible for a Unitized Fund to hold a larger percentage of its assets in "cash" in order to minimize the likelihood that there will be such a cash shortfall; however, such an approach will undermine the achievement of the investment objective of the investment option, especially those that are equity based. Moreover, according to the Applicant, it is simply not feasible, as a practical matter, to maintain enough "cash" in a Unitized Fund at all times to be certain that the Unitized Fund will always be in a position to meet the maximum potential need, especially during volatile market situations. Hence, it is inevitable that at least some liquidity shortfalls will occur from time to time.

5. Fidelity has negotiated the Lines of Credit with several banks that are not related to Fidelity, and anticipates that it may from time to time negotiate additional Lines of Credit. These Lines of Credit allow Fidelity to borrow, on the Plans' behalf, cash in order to meet the Unitized Funds' short-term cash shortfalls. Fidelity anticipates that there will be approximately three or four Lenders at any given time. It is also anticipated that the Lenders will be very large financial institutions with many affiliated companies and worldwide operations. In view of the size of such institutions and the number of Plans involved, Fidelity represents that it is very difficult for such institutions to determine whether they are parties in interest with respect to any of the Plans. Moreover, even if it were to be

established that the Lenders are not parties in interest with respect to the Plans, that could change over time while a Loan is outstanding or as new Loans are affected.

6. Since Fidelity may not be able to determine in the ordinary course of business, whether a Lender is a party in interest with respect to each Plan, the Lines of Credit raise potential concerns under section 406(a) of the Act, absent an exemption. In this regard, given the size of the Lenders, the large number of Plans involved and the various conditions of the potentially available class exemptions (e.g., the qualified professional asset manager exemption, (QPAM), PTE 84-14, 49 FR 9494(3/13/84), as corrected, 50 FR 41430 (10/10/85), it may be difficult to determine if any of such class exemptions are available. Consequently, the implementation of the Lines of Credit, and the Loans thereunder, even where such Line of Credit is in the best interests of the Plan, may result in a prohibited transaction.

7. The Applicant represents that each Line of Credit provides that (i) each Loan thereunder will be unsecured, (ii) recourse with respect to each Loan thereunder will be limited to the assets of the Unitized Fund that borrowed the funds, (iii) each Loan thereunder, including accrued interest thereon, will be repaid promptly in the ordinary course of business, generally in less than ten days and (iv) with respect to any Unitized Fund, the aggregate amount of Loans outstanding on any business day that a Loan is initiated will not, after such Loan is made, exceed 25% of the total fair market value of the Unitized Fund.¹ The total fair market value of a Unitized Fund (including Employer Stock, cash or cash equivalents and accrued dividends and earnings) will be determined as of the most recent close of the New York Stock Exchange or as otherwise provided in the applicable Line of Credit, provided such determination is substantially contemporaneous with the Loan.

8. Interest rates will be quoted to Fidelity each business day by each Lender in accordance with the terms of the Line of Credit. The quoted interest rate will be based on a Federal funds rate (or other market rate) plus a spread,

and will apply to any Loans from the Lender that are outstanding on such day. Because the quoted interest rate may fluctuate daily, the rate of interest being charged on any outstanding loan may also fluctuate daily.

9. In regard to these Lines of Credit, Fidelity will act as a fiduciary pursuant to a written agreement with the Plan. The agreement will provide that Fidelity will act as a fiduciary on behalf of the Plan in connection with the negotiation of the Plan's participation in the Line of Credit agreements, the negotiation of interest rates under the Line of Credit agreements, the Loans under the Line of Credit agreements, the ordering rules and limitations described below, and the terms of repayment of the Line of Credit agreements.

10. Fidelity will establish generally applicable ordering rules and limitations with respect to the use of the Lines of Credit. The need for such rules arises from several factors. For example, although not anticipated to be very likely, it is possible that the aggregate liquidity needs of all eligible Unitized Funds on any given day may exceed the total credit available under all of the credit lines then in place. In addition, and more relevant, the three or four Lenders that will be making advances available under the lines may, and likely will, quote different rates on a given day. If the aggregate demand for liquidity on a particular day exceeds the amount of credit available at the most favorable rate on that day, then it is necessary to allocate the opportunity to borrow at the most favorable rate(s) among the various Unitized Funds requiring liquidity on that day. Accordingly, on those days when the aggregate liquidity demand of the eligible Unitized Funds exceeds the amount available at the most favorable rate, Fidelity will implement a policy pursuant to which it will allocate the available credit among the Unitized Funds pursuant to a pre-established objective allocation methodology.

11. Fidelity will initiate, account for and administer each Loan and will monitor such transactions on behalf of the Plans to ensure that the terms and conditions of the exemption are met at all times.

12. Fidelity will provide the Plan Sponsor of each Plan that has any outstanding Loans during a calendar month with a written report showing the Plan's outstanding Loans on each day during such month, the amount repaid on each such day, the amount of interest paid on each such day, the interest rate and the aggregate balance of all Loans outstanding on the last business day of such month and the

aggregate amount of interest paid during such month.

13. The Plan Sponsor of each Plan will be notified of the Lines of Credit that may be available to such Plan in advance of any Loan made pursuant to the exemption. Such notice will include a general description of the Lines of Credit and how they operate. Each Plan Sponsor may elect to "opt-out" of the program, in which event the Plan of such Plan Sponsor will not effect any Loans under the Lines of Credit. Moreover, a Plan Sponsor who has initially determined not to opt-out of the program may at any time thereafter elect to opt-out of the program without penalty, by written notice to Fidelity. Subsequent to its receipt of such a notice, Fidelity will not effect any further Loans on behalf of such Plan under the Lines of Credit. Any Loans outstanding at the time such notice is received will be repaid in accordance with the Lines of Credit.

14. Fidelity will not receive any fees or other compensation from the Plans in connection with the Lines of Credit. In addition, Fidelity will not receive any payment or other consideration from the Lenders in connection with the Loans. Fidelity represents that it will pay the Lender's cost of establishing the Lines of Credit. The Applicant represents that such up-front expenses are required to be paid by the borrower (the Plans on behalf of their Unitized Funds) under virtually all credit agreements. In this case, in order to induce the Lenders to enter into the proposed arrangements, and given the practical difficulty of allocating the up-front cost of establishing the arrangements among the many Unitized Funds that may ultimately participate in the credit arrangement, Fidelity has determined that it will pay these expenses on behalf of the Unitized Funds. Any out-of-pocket expenses incurred by a Lender in enforcing the agreement, however, will generally be paid by the applicable Unitized Fund, unless otherwise paid by the Plan Sponsor or Fidelity. The Applicant represents that lender expenses relating to enforcing the terms of the loan are required to be paid by the borrower (here the Plans on behalf of the Unitized Funds) under virtually all credit agreements.

15. As a general matter, Fidelity explains that its intent is that the credit program will be administered such that advances under the program will be used primarily in the context of settlement risk (i.e., the risk of broker default prior to settlement) as opposed to being used in the context of market risk. "Settlement risk" is present when a Unitized Fund has entered into the

¹ The Applicant originally requested a limit of 33 1/3 percent, explaining that registered investment companies (mutual funds) can potentially face the same types of liquidity concerns as the Unitized Funds. According to the Applicant, pursuant to section 18(f)(1) of the Investment Company Act of 1940, such mutual funds would be limited to borrowing no more than 33 1/3 percent of fund assets. The Department believed that a 25 percent limit was more appropriate and the Applicant agreed.

sale transaction whose settlement (*i.e.*, receipt of cash proceeds) is pending (thereby triggering the liquidity shortfall to be satisfied by a Loan) prior to the close of business on the day on which the withdrawal that is being funded by such advance occurs. In this situation, the price of the "related" sale transaction is known and will be factored into the Unitized Fund unit value that is utilized for purposes of the withdrawal. By contrast, according to Fidelity, market risk will be present (in addition to settlement risk) in situations where the "related" sale transaction is not able to be effected prior to the determination of the relevant Unitized Fund unit value, with the result that the Unitized Fund (and the remaining participants in the Unitized Fund) bear the risk that the actual sale transaction price will turn out to be lower than the value on which the unit value was based.²

16. In addition, in order to maintain the integrity of the overall credit arrangement, Fidelity reserves the ability, in its sole discretion, to exclude a particular Plan or Plans from access to the Lines of Credit on a given day or days. Fidelity represents that it does not anticipate that it will exercise its exclusion power very often. The Applicant explains that, if there were circumstances giving rise to a material concern regarding the potential for default by a particular Plan, (such as, for example, an unanticipated bankruptcy of the Plan sponsor that triggers a suspension of trading in the Plan sponsor's stock or some other cause of extreme volatility in the Plan sponsor's stock value) Fidelity believes it is important that it have the power to avoid the risk of such default by excluding the Plan from borrowing under the Line of Credit program during the period of concern.

17. In summary, the applicant represents that the proposed Lines of Credit satisfy the criteria contained in section 408(a) of the Act for the following reasons:

(a) the Loan terms must be at least as favorable to the Plan as a similar third-party arm's-length transaction;

(b) each Loan will be initiated, accounted for and administered by Fidelity which will maintain written records of each Loan and monitor the terms and conditions of the exemption, on behalf of the affected Plan, at all times.

² According to Fidelity, the Unitized Fund (and the remaining participants) will also benefit on the upside in the event that the actual sale transaction price turns out to be higher than the value on which the unit value was based.

(c) the same Lines of Credit will generally be available pursuant to their terms for use by all of the Unitized Funds;

(d) the Lenders will not be "related" to Fidelity or "parties in interest" to the Plans other than by reason of being a service provider to the Plans or related to a service provider;

(e) the Plans will benefit from not having to maintain a larger cash buffer that undermines the achievement of the investment objective of the Unitized Funds;

(f) the Plans will further benefit from not having to delay withdrawals from the Unitized Funds in most situations until such time as there is sufficient cash to satisfy the cash shortfall and therefore will be able to better achieve the participants' expectation of a "daily environment;" and

(g) the sponsor of each Plan will be notified of the existence of the Lines of Credit that may be available to such Plan in advance of any Loan made pursuant to the exemption and will make an independent decision whether the Plan should participate in the program. In addition, the Plan Sponsor of a Plan that is participating in the program may elect to opt out at any time, without penalty.

Notice to Interested Persons

Notice of the proposed exemption will be provided by first-class mail to each known Plan Sponsor within 25 days after the publication of the notice of proposed exemption in the **Federal Register**. Such notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing. Comments and hearing requests with respect to the proposed exemption are due 45 days after the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea W. Selvaggio of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

Brightpoint, Inc. (Brightpoint) Located in Indianapolis, Indiana

[Exemption Application No. D-10999]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55

FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) The June 5, 2001 payment (the Payment) by Brightpoint of \$108,738.85 (the Assessment Amount) to the Millennium Trust Company LLC (Millennium) on behalf of the Brightpoint, Inc. 401(k) Plan (the Plan) for the purpose of satisfying a court-ordered assessment against the assets of the Plan (the Assessment) that arose in connection with the \$68,100,000.00 deficiency (the Deficiency) incurred by the Independent Trust Corporation (Intrust); and (2) the transfer by the Plan to Brightpoint (the Repayment) of certain assets recovered by PricewaterhouseCoopers LLP (the Receiver) in connection with the Deficiency, if the following conditions are met:

(A) In the event the Plan receives an amount of assets from the Receiver (a Recovery Amount) that is greater than the Assessment Amount, the Plan will not be required to pay Brightpoint that portion of the Recovery Amount that is in excess of the Assessment Amount;

(B) In the event the Plan receives a Recovery Amount that is less than the Assessment Amount, the Plan will not be required to pay Brightpoint the difference between the Assessment Amount and the Recovery Amount;

(C) The Plan will not pay any of the costs and/or fees associated with the Payment and the Repayment;

(D) The Deficiency did not arise in connection with any improper act undertaken by a Plan fiduciary (other than Intrust or its principals); and

(E) Upon notification of the Intrust losses, the Brightpoint Plan fiduciaries undertook, and will continue to undertake, any actions necessary to ensure that the assets of the Plan were, and are, adequately protected.

EFFECTIVE DATE: June 5, 2001.

Summary of Facts and Representations

1. Brightpoint is a Delaware corporation with its principal offices located in Indianapolis, Indiana. Brightpoint supports the global wireless telecommunications industry through the provision of, among other things, distribution, management, and business solution services.

2. Brightpoint is the sponsor of the Plan. The Plan is a defined contribution 401(k) plan having 480 participants and \$2,648,775.39 in total assets as of March 31, 2001. The applicant represents that

the assets of the Plan are comprised solely of shares of certain mutual funds and shares of Brightpoint stock (collectively, the Plan Shares).

The applicant states that from April 1, 1997 until April 13, 2001, Intrust acted as the trustee of the Plan.³ As such, Intrust forwarded Plan contributions to either American Funds, the custodian for the mutual funds, or McDonald & Company, the custodian for the Brightpoint stock. In addition, Intrust processed Plan distributions by forwarding to Plan participants the cash proceeds it received from various sales of the Plan Shares.

3. On April 14, 2000, the Illinois Office of Banks and Real Estate (the State Regulator) discovered the Deficiency. In this regard, on that date, the State Regulator determined that a substantial cash shortage existed with respect to the amount of assets held in trust by Intrust. According to the applicant, it is presently believed that the Deficiency, the resolution of which is currently under litigation, resulted from the misappropriation by certain Intrust principals of assets held by Intrust. Specifically, the Deficiency involved cash taken from certain Intrust accounts. The applicant states, however, that cash was not misappropriated from the Plan's trust account with Intrust (the Intrust Plan Account). As a result, the applicant states that the amount of assets held in the Intrust Plan Account, being comprised primarily of the Plan Shares, was not affected or reduced by the misappropriation of Intrust assets (the Misappropriation).

The State Regulator initiated receivership proceedings under the jurisdiction of the Circuit Court of Cook County, Illinois (the Court). The Court appointed PricewaterhouseCoopers LLP as the receiver of Intrust and, with limited exceptions, the Court froze all of the trust assets held by Intrust, including those of the Plan.⁴ On November 29, 2000, the Court approved the purchase of Intrust's assets by Millennium and, thereafter, Millennium became the trustee of the Plan. The applicant represents that currently the

Plan Shares are held in trust in a certain Millennium trust account (the Millennium Plan Account).

4. On March 1, 2001, upon determining that the Deficiency totaled \$68,100,000.00, the Court issued an order (the First Court Order) that apportioned the Deficiency among certain Intrust accounts (the Allocation). In this regard, after taking judicial notice of, among other things, various hearings, proceedings, testimony, arguments, and pleadings, the Court determined that it was not feasible to trace the Deficiency Amount to specific Intrust accounts. Rather, with certain exceptions not applicable to the Plan, the Court allocated the Deficiency among essentially all of the frozen former Intrust accounts on mostly a pro rata basis.

In this way, the Court allocated the Assessment Amount to the Millennium Plan Account. The applicant represents that such assessment had the effect of a \$108,738.85 charge against the assets held in the Millennium Plan Account.⁵

5. Each trust account affected by the Allocation, or a party on behalf of such account, was required to pay its allocated portion to Millennium by June 5, 2001.⁶ Pursuant to the terms of the First Court Order, upon Millennium's receipt of this payment, the Receiver was required to issue the respective payor a certificate. Such certificate entitled its holder to receive a pro rata portion of the total net amount recovered from certain Intrust principals, insurers, and/or elsewhere. A certificate, however, did not guarantee its holder would receive a recovery amount equal to the amount such holder paid pursuant to the Court's allocation of the Deficiency.

6. Upon monitoring the legal actions associated with the Deficiency, the applicant states, Brightpoint determined that the Recovery Amount would likely be less than the Assessment Amount.⁷ To protect the Plan from a potential shortfall, on June 5, 2001, Brightpoint

paid the Assessment Amount on behalf of the Plan. The applicant represents that, consistent with the terms of the First Court Order, Brightpoint thereafter anticipated that it would receive a certificate from the Receiver.

7. On September 8, 2001, the Receiver petitioned the court to amend the First Court Order. In this regard, the applicant states that for reasons unrelated to the Plan and the transactions described herein, the Receiver sought a procedural change with respect to the issuance of the certificates. As applied to the payment by Brightpoint of the Assessment Amount on behalf of the Plan, and contrary to the terms of the First Court Order, the requested amendment had the effect of requiring the Receiver to issue a certificate to the Plan, and not Brightpoint. The Court granted the motion on October 12, 2001 and, accordingly, the First Court Order was amended (the Amended Court Order).

Accordingly, the Plan received, and currently continues to hold, a certificate that was issued by the Receiver (the Certificate). The applicant states that, to date, the Plan has not received any amounts pursuant to its holding of the Certificate.

8. The applicant seeks relief for the Payment and the Repayment. In this regard, the applicant represents that as stated above, Brightpoint undertook the Payment in the belief that the Recovery Amount will likely be less than the Assessment Amount. The applicant notes that, in the event that the Recovery Amount does in fact turn out to be less than the Assessment Amount, the Plan will not be required to pay Brightpoint the amount representing the difference between the Assessment Amount and the Recovery Amount. In this way, the Plan will not incur a loss due to the court-ordered allocation of the Deficiency.

The applicant states further that the terms of the Repayment are also protective of the Plan. In this regard, the entitlement of Brightpoint to any recovery of the Deficiency pursuant to the holding of the Certificate by the Plan is limited to an amount not in excess of the Assessment Amount. Pursuant to the terms of the Repayment, in the event that the Recovery Amount turns out to be greater than the Assessment Amount, the portion of the Recovery Amount that exceeds the Assessment Amount will be retained by the Plan. In this way, Brightpoint may only receive up to \$108,738.85, the amount Brightpoint paid to Millennium on behalf of the Plan, as a result of the Plan's holding of the Certificate.

³ The Department is expressing no opinion herein as to whether the requirements of section 404 of the Act have been met with respect to the hiring and retention of Intrust by Brightpoint.

⁴ By order of the Court, the assets held in the Plan Millennium Account, and almost all other former Intrust accounts, were to remain frozen until Millennium had completed its efforts to collect the allocated shortage amounts from each affected account. The applicant represents that for the period in time in which the assets remained frozen, Plan distributions were made using assets that came into the Plan after the starting date of the freeze. Subsequently, the assets in the Plan Millennium Account were unfrozen and, thereafter, Plan distributions were made from the unfrozen assets.

⁵ To determine this amount, the Court first determined the types of Intrust account assets that would be subject to the Allocation. Next, the Court determined that an amount equal to 8.69% of the total amount of such assets would need to be paid to Millennium to offset the shortage. Since the Account held \$1,251,310.16 in assets subject to the Allocation, the Plan, or a party on behalf of the Plan, was required to pay \$108,738.85 (0.0869 × \$1,251,310.16) to Millennium.

⁶ The applicant states that if Millennium did not receive the assessed amount with respect to a particular account by June 5, 2001, Millennium was authorized by the Court to reduce the amount of assets held in that account by such assessed amount.

⁷ According to the applicant, Brightpoint retains the belief that the Recovery Amount will be less than the Allocation Amount.

9. The applicant states that Brightpoint acted in good faith in paying the Assessment Amount on behalf of the Plan. In this regard, the applicant represents that the fiduciaries of the Plan had no reason or opportunity to know in advance of the Deficiency since the Intrust shortage consisted solely of non-Plan assets. In addition, the applicant represents that Plan distributions processed through Intrust were done so properly and in a timely manner. According to the applicant, Brightpoint paid the Assessment Amount solely as a means of responding to an event that was potentially harmful to the Plan and its participants and beneficiaries.

10. In summary, the applicant represents that the Payment and Repayment satisfy the statutory criteria for an exemption under section 408(a) of the Act since:

(A) In the event the Plan receives a Recovery Amount that is greater than the Assessment Amount, the Plan will not be required to pay Brightpoint that portion of the Recovery Amount that is in excess of the Assessment Amount;

(B) In the event the Plan receives a Recovery Amount that is less than the Assessment Amount, the Plan will not be required to pay Brightpoint the difference between the Assessment Amount and the Recovery Amount;

(C) The Plan will not pay any of the costs and/or fees associated with the Payment and the Repayment;

(D) The Deficiency did not arise in connection with any improper act undertaken by a Plan fiduciary (other than Intrust or its principals); and

(E) Upon notification of the Intrust losses, the Brightpoint Plan fiduciaries undertook, and will continue to undertake, the actions necessary to ensure that the assets of the Plan were, and are, adequately protected.

Notice to Interested Persons: The applicant represents that notice to interested persons will be made within thirty (30) business days following publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than sixty (60) days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Christopher Motta of the Department, telephone (202) 693-8544. (This is not a toll-free number.)

J. Penner Corporation Profit Sharing Plan (the Plan), Located in Doylestown, PA

[Application No. D-11099]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).⁸ If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the sale (the Sale) of certain improved real property (the Property) by Thomas G. Frazier and Carol G. Frazier (the Fraziers) to their respective participant directed individual investment accounts in the Plan (the Thomas Frazier Account and the Carol Frazier Account; together, the Frazier Accounts or the Accounts); and (2) the simultaneous lease (the Lease) of the Property by the Frazier Accounts to J. Penner Corporation (the Corporation), the Plan sponsor and a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The terms and conditions of the transactions are not less favorable to the Frazier Accounts than those which the Frazier Accounts would receive in an arm's length transaction with an unrelated party.

(b) The Sale is a one-time transaction for cash.

(c) The acquisition price that is paid by the Frazier Accounts for proportionate interests in the Property is not more than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale.

(d) The value of the proportionate interests in the Property that are acquired by each of the Frazier Accounts does not exceed 25% of each of the Frazier Accounts' assets at the time of the Sale nor throughout the duration of the Lease.

(e) The Frazier Accounts do not pay any real estate fees, commissions or other expenses with respect to the transactions.

(f) The rental amount under the Lease is no less than the fair market rental

⁸ For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

value of the Property, as determined by a qualified, independent appraiser on the date the Lease is entered into by the parties.

(g) The Lease is a triple net lease under which the Corporation, as lessee, pays, in addition to the base rent, all normal operating expenses of the Property, including taxes, insurance, maintenance, repairs and utilities.

(h) The Fraziers indemnify and hold the Plan and the Frazier Accounts harmless from any liability arising from the Sale, including, but not limited to, hazardous material found on the Property, violation of zoning, land use regulations or restrictions, and violations of federal, state or local environmental regulations or laws.

(i) The Sale is effected and the Lease commences only upon completion of the following transactions, which shall occur no later than sixty days after the granting of the final exemption: (1) The Fraziers and the Bucks County Industrial Development Corporation (BCIDC) fulfill all of their obligations to the Pennsylvania Industrial Development Authority (PIDA); (2) the Fraziers pay off their debt obligation to BCIDC in accordance with the terms of an installment sale agreement (the Installment Sale Agreement) and reacquire legal title to the Property; and (3) the lease agreement (the Original Lease) between the Fraziers and the Corporation is terminated.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan, as described in section 401(a) of the Code, and is exempt from taxation under section 501 of the Code. The Plan was established by the Corporation on July 1, 1986. As of December 31, 2001, the Plan had 18 participants, including the Fraziers. The Plan provides for individually-directed accounts and each of the Fraziers maintains a directed investment account in such Plan. The Fraziers are trustees and fiduciaries of the Plan.

As of December 31, 2001, the Plan had total assets of approximately \$1,945,224. As of the same date, the Thomas Frazier Account in the Plan had a fair market value of \$919,472 and the Carol Frazier Account in the Plan had a fair market value of \$537,520, for a combined total fair market value of \$1,456,992.

2. The Corporation is an S corporation that is incorporated in the Commonwealth of Pennsylvania and maintains its principal place of business in Doylestown, Pennsylvania. The Corporation manufactures products for the automotive replacement glass market and sells its products to the

original equipment manufacturers. The Fraziers own 100 percent of the outstanding capital stock of the Corporation and they are directors and officers of the Corporation.

3. At present, BCIDC, a Pennsylvania non-profit corporation, holds legal title to certain improved, real property that is located at 17 Weldon Drive, Doylestown Township, Doylestown, Pennsylvania, of which the Fraziers are the equitable owners, as set forth in the Installment Sale Agreement. The Property consists of a 3.47 acre parcel of light industrially zoned land with an existing one story industrial building totaling approximately 10,000 square feet of space and adjoining parking facilities. The Fraziers originally acquired the Property, which was vacant land at the time, in 1988 for \$212,000 in cash from Horsham Valley Development Corporation, an unrelated party. The Property is currently subject to an original lease (the Original Lease) between the Fraziers as the lessors, and the Corporation as the lessee. The Original Lease is a 15 year, triple net lease which commenced on April 5, 1990 and expires on April 1, 2005. The annual rental under the Original Lease is \$80,000, payable in monthly installments of approximately \$6,666.67. The Corporation does not own any other real estate contiguous to the Property, which is used solely by the Corporation in its business.

4. On April 5, 1990, legal title to the Property was transferred by the Fraziers to BCIDC by deed for consideration in the amount of \$1.00. This enabled BCIDC to obtain a first mortgage loan (the Mortgage Loan) from PIDA, a Pennsylvania non-profit entity created under the Pennsylvania Industrial Development Authority Act (the PIDAA)⁹ to provide financing in the form of low interest loans for industrial development projects throughout Pennsylvania. The Mortgage Loan is in the principal amount of \$314,822. It has a term that commenced on June 1, 1990 and ends on May 1, 2005, and it carries an interest rate of three percent per annum. The parties intended that the interest rate would be passed through to the Fraziers under the terms of the Installment Sale Agreement. The applicants represent that this interest rate could only be obtained by having BCIDC acquire legal title to the Property so that the Property could qualify as an

“industrial development project.”¹⁰ In addition, the applicants represent that BCIDC agreed to enter into this financing arrangement with the Fraziers in order to establish an industrial development project and to create jobs in the area.

The Fraziers received the Mortgage Loan proceeds and simultaneously entered into the Installment Sale Agreement on April 5, 1990 with BCIDC to repurchase the Property for \$314,822 and pay for it over a period of 15 years, which coincides with the term of the Mortgage Loan. Pursuant to the amortization schedule, such payments would be in monthly installments of \$2,174.11, with interest at three percent per annum included in each payment.

The Fraziers used the Mortgage Loan proceeds exclusively for the industrial development project. Of the \$314,822 received, \$5,626.96 were used for settlement costs including counsel fees, title insurance, recording fees and real estate taxes. The balance of the Mortgage Loan proceeds was used to construct the industrial building. As of August 31, 2002, the Mortgage Loan and the Installment Sale Agreement had an outstanding principal balance of approximately \$66,779.79.

As collateral for the Mortgage Loan, the Fraziers assigned the Original Lease to PIDA and BCIDC and the Installment Sale Agreement to PIDA. As additional security for the Mortgage Loan, the Fraziers gave their personal guarantee.

5. The Property has been appraised by Stuart S. Kingsbury, Jr., CCRA, CREA, CRB, GRI of Kingsbury Real Estate Appraisers, located in Doylestown, Pennsylvania. Mr. Kingsbury is an independent, certified general appraiser in the State of Pennsylvania. In an independent appraisal report dated April 6, 2002 (the 2002 Appraisal), Mr. Kingsbury updated a June 27, 2001 independent appraisal (the 2001 Appraisal) that was prepared by his firm, in which the Property's fair market value and annual fair market rental value were placed at \$330,000 and \$80,000, respectively, as of June 1, 2001. Utilizing the Market Data Approach to valuation in the 2002 Appraisal, Mr. Kingsbury determined that the fair market value of the Property as of March 19, 2002 was \$350,000. As of the same date, Mr. Kingsbury also determined

that the annual fair market rental value of the Property was \$85,000 or \$7,0883.33 per month on a triple net basis. Mr. Kingsbury will again update the appraisal on the date of the Sale and Lease transactions.

6. To enable the Frazier Accounts to diversify their assets by obtaining income-producing real estate, the applicants propose that the Frazier Accounts purchase the Property from the Fraziers for \$350,000 or an amount that is not more than the fair market value of the Property on the date of the Sale. The Property will be allocated between the Frazier Accounts so that the Thomas Frazier Account acquires a 64 percent interest in the Property, representing approximately 24 percent of the fair market value of such Account's assets, and the Carol Frazier Account acquires a 36 percent interest in the Property, representing approximately 23 percent of the fair market value of that Account's assets.

Contemporaneously with their purchase of the Property, the Frazier Accounts will enter into the Lease with the Corporation. The Frazier Accounts will not be required to pay any real estate fees, commissions or other expenses in connection with their acquisition of the Property or with the administration of the Lease. Further, the Fraziers, who had a combined net worth of approximately \$3 million as of September 21, 2002, will indemnify and hold the Plan and the Frazier Accounts harmless from any liability arising from the Sale, including, but not limited to, hazardous material found on the Property, violation of zoning, land use regulations or restrictions, and violations of federal, state or local environmental regulations or laws.¹¹ Finally, the Sale and the Lease will commence only upon the completion of the following transactions, which will occur no later than sixty days after the granting of the final exemption: (a) The Fraziers and BCIDC have fulfilled all of their obligations to PIDA; (b) the Fraziers have paid off their debt obligation to BCIDC in accordance with the Installment Sale Agreement and have reacquired legal title to the

¹¹ It should be noted that in his 2001 Appraisal of the Property, Mr. Kingsbury states that his routine inspection of, and inquiries about, the Property did not reveal any information to indicate any apparent environmental conditions which would affect the Property's value negatively. However, he explains that it is possible that tests and inspections made by a qualified hazardous substance and environmental expert would reveal the existence of hazardous materials and environmental conditions on or around the Property that would negatively affect its value. Mr. Kingsbury did not comment on the Property's environmental conditions in his 2002 Appraisal.

⁹ The purpose of the PIDAA is to promote the welfare of the people of Pennsylvania by reducing unemployment in certain critical economic areas and to provide for the establishment of industrial development projects in such areas.

¹⁰ Under Section 303(i) of the PIDAA, as amended, an “industrial development project” is described as any land, site, structure, facility or undertaking comprising or being connected with or being a part of (i) an industrial enterprise, (ii) a manufacturing enterprise, (iii) a research and development enterprise, or (iv) an agricultural enterprise, established or to be established by an industrial development agency in a critical economic area.

Property; and (c) the Original Lease between the Fraziers and the Corporation has been terminated.

Accordingly, the applicants request an administrative exemption from the Department under the terms and conditions described herein.

7. The proposed Lease will be for a term of ten years and it will have no renewal options. The Lease provides that the Corporation will pay the Frazier Accounts an initial monthly rent of \$7,083.33 per month, based upon Mr. Kingsbury's 2002 Appraisal of the fair market rental value of the Property, which will be updated at the time the Lease is entered into by the parties. Said rent will be allocated in proportion to each Account's ownership interest in the Property. The Lease will be a triple net lease under which the Corporation will pay all normal operating expenses of the Property, including taxes, insurance, maintenance, repairs and utilities. The applicant represents that on the third, sixth and ninth anniversaries of the date of commencement of the Lease (the Tri-Annual Adjustment Dates), the fair market rental value of the Property will be determined as of the Tri-Annual Adjustment Date, by a qualified, independent appraiser selected by the Fraziers in their capacity as trustees of their respective Accounts in the Plan. However, in no event will the rent be adjusted below the rental amount paid for the preceding year. In addition, during each year of the term of the Lease, the rental rate will be increased by an amount equal to the most recent percentage increase in the Consumer Price Index or three percent, whichever is greater.

8. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The terms and conditions of the transactions will not be less favorable to the Frazier Accounts than those which the Frazier Accounts would receive in an arm's length transaction with an unrelated party.

(b) The Sale will be a one-time transaction for cash.

(c) The acquisition price that is paid by the Frazier Accounts for proportionate interests in the Property will be no more than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale.

(d) The value of the proportionate interests in the Property that are acquired by each of the Frazier Accounts will not exceed 25 percent of each of the Frazier Accounts' assets at

the time of the transaction and throughout the duration of the Lease.

(e) The Frazier Accounts will not pay any real estate commissions, fees or other expenses with respect to the transactions.

(f) The rental amount of the Lease will be no less than the fair market rental value of the Property, as determined by a qualified, independent appraiser on the date the Lease is entered into by the parties.

(g) The Lease will be a triple net lease under which the Corporation, as lessee, will pay, in addition to the base rent, all normal operating expenses of the Property, including taxes, insurance, maintenance, repairs and utilities.

(h) The Fraziers will indemnify and hold the Plan and the Frazier Accounts harmless from any liability arising from the Sale, including, but not limited to, hazardous material found on the Property, violation of zoning, land use regulations or restrictions, and violations of federal, state or local environmental regulations or laws.

(i) The Sale will be effected and the Lease will commence only upon completion of the following transactions, which shall occur no later than sixty days following the granting of the exemption: (1) The Fraziers and BCIDC have fulfilled all of their obligations to PIDA; (2) the Fraziers have paid off their debt obligation to BCIDC in accordance with the Installment Sale Agreement and have reacquired legal title to the Property; and (3) the Original Lease between the Fraziers and the Corporation has been terminated.

Notice to Interested Persons

The Fraziers will provide notice of the proposed exemption to all interested persons by personal delivery within ten days of the date of publication of the notice of proposed exemption in the **Federal Register**. The notice will include a copy of the proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments regarding the proposed exemption and requests for a public hearing are due within 40 days of the date of publication of the notice of pendency in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M.N. Mpras of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of October, 2002.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits,
Administration, Department of Labor.*

[FR Doc. 02-25598 Filed 10-7-02; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration**

[Prohibited Transaction Exemption 2002-47; Exemption Application No. D-10989 et al.]

Grant of Individual Exemptions; Investors Savings Bank Pension Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Investors Savings Bank

Pension Plan (the Plan) Located in Milburn, New Jersey

[Prohibited Transaction Exemption 2002-47; Exemption Application No. D-10989]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sales by the Plan of certain securities (the Securities) to Investors Savings Bank, a party in interest with respect to the Plan, provided that the following conditions were satisfied: (1) Each sale was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sales; (3) for each Security that was publicly traded, the Plan received an amount equal to the highest, as of the date of the sale, of (a) the Plan's cost, (b) the book value, or (c) the fair market value of the Security, as determined by an independent, third-party market source; and (4) for each Security that was not publicly traded, the Plan received an amount equal to its cost for the Security, which was in excess of the fair market value of the Security on the date of the sale.

Effective Date: The exemption is effective as of January 4, 1999.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 9, 2002 at 67 FR 51877.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

Deutsche Bank AG and Its Affiliates Located in Frankfurt am Main, Germany

[Prohibited Transaction Exemption 2002-48; Exemption Application No. D-10991]

Exemption*Section I—Transactions*

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, as of April 24, 2001, to

(a) The lending of securities, under certain "exclusive borrowing" arrangements, to

(1) Deutsche Bank AG (Deutsche Bank) (including the New York Branch of Deutsche Bank (DBNY)); or

(2) Its affiliates Deutsche Bank Securities Inc. (DBS), Deutsche Bank Trust Company Americas (DBT), the "Foreign Borrowers" (as defined in Section III), and any branch or affiliate of Deutsche Bank that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or a U.S. bank (collectively, with Deutsche Bank, referred to as the "Borrowers," as defined in Section III) by employee benefit plans (Plans), including commingled investment funds holding assets of such Plans, with respect to which the Borrowers are a party in interest; and

(b) the receipt of compensation by Deutsche Bank or its affiliates in connection with the securities lending transactions, provided that the conditions, set forth in Section II, are satisfied.

Section II—Conditions

(a) For each Plan, neither the Borrower nor any affiliate has or exercises discretionary authority or control over the Plan's investment in the securities available for loan, nor do they render investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets.

(b) The party in interest dealing with the Plan is a party in interest with respect to the Plan (including a fiduciary) solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of the Act.

(c) The Borrower directly negotiates an exclusive borrowing agreement (the Borrowing Agreement) with a Plan fiduciary that is independent of the Borrower and its affiliates.

(d) The terms of each loan of securities by a Plan to a Borrower are at least as favorable to such Plan as those of a comparable arm's length transaction between unrelated parties, taking into account the exclusive arrangement.

(e) In exchange for granting the Borrower the exclusive right to borrow certain securities, the Plan receives from the Borrower either (i) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement from time to time), (ii) a periodic payment that is equal to a percentage of the value of the total balance of the outstanding borrowed securities, or (iii) any combination of (i) and (ii) (collectively,

the Exclusive Fee). If the Borrower deposits cash collateral, all the earnings generated by such cash collateral shall be returned to the Borrower—provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan that a percentage of the earnings on the collateral may be retained by the Plan, or the Plan may agree to pay the Borrower a rebate fee and retain the earnings on the collateral (the Shared Earnings Compensation). If the Borrower deposits non-cash collateral, all earnings on the non-cash collateral shall be returned to the Borrower—provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee (the Lending Fee) (the Lending Fee and the Shared Earnings Compensation are collectively referred to as the “Transaction Lending Fee”). The Transaction Lending Fee, if any, shall be either in addition to the Exclusive Fee or an offset against such Exclusive Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement. Any change in the Exclusive Fee or the Transaction Lending Fee that the Borrower pays to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of the Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

(f) The Borrower may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to the Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage, or other percentage determined pursuant to an objective formula.

(g) By the close of business on or before the day the loaned securities are delivered to the Borrower, the Plan receives from the Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or

instrumentalities, irrevocable bank letters of credit issued by a U.S. bank other than Deutsche Bank or any affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) (and as further amended or superseded).¹ Such collateral will be deposited and maintained in an account which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held with a third party, an affiliate of the Borrower, or a branch of Deutsche Bank other than the Borrower that is a trustee or custodian of the Plan. If maintained by an affiliate of the Borrower or a branch of Deutsche Bank other than the Borrower, the collateral will be segregated from the assets of such affiliate or branch.

(h) The market value (or in the case of a letter of credit, the stated amount) of the collateral initially equals at least 102 percent of the market value of the loaned securities on the close of business on the day preceding the date of the loan and, if the market value of the collateral at any time falls below 100 percent (or such higher percentage as the Borrower and the independent fiduciary of the Plan may agree upon) of the market value of the loaned securities, the Borrower delivers additional collateral on the following day to bring the level of the collateral back to at least 102 percent. The level of the collateral is monitored daily by the Plan or its designee, which may be Deutsche Bank or any of its branches or affiliates, including DBT, which provides custodial or directed trustee services in respect of the securities covered by the Borrowing Agreement for the Plan. The Borrowing Agreement will provide the Plan with a continuing security interest in, and a lien on, the collateral, or will provide for the transfer of title to the collateral to the Plan.

(i) Before entering into a Borrowing Agreement, the Borrower furnishes to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as

¹ PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act) (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement—provided, however, that in the case of a Borrower that is a branch of Deutsche Bank, the Borrower will furnish to the Plan the most recent publicly available audited and unaudited statement of Deutsche Bank's financial condition.

(j) The Borrowing Agreement contains a representation by the Borrower that, as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

(k) The Plan receives the equivalent of all distributions made during the loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of tax withholdings)² had it remained the record owner of the securities.

(l) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty (except for, if the Plan has terminated its Borrowing Agreement, the return to the Borrower of a pro-rata portion of the Exclusive Fee paid by the Borrower to the Plan) whereupon the Borrower delivers securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five business days of written notice of termination or the customary settlement period for such securities.

(m) In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement, the Plan or its agent will have the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the United States with respect to the difference between the replacement cost of securities and the market value of the collateral on the

² The Department notes the Borrowers' representation that dividends and other distributions on foreign securities payable to a lending Plan are subject to foreign tax withholdings and that the Borrower will always put the Plan back in at least as good a position as it would have been had it not loaned securities.

date the loan is declared in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate, including reasonable attorneys' fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly indemnify the Plan.

(n) Except as otherwise provided herein, all procedures regarding the securities lending activities, at a minimum, conform to the applicable provisions of PTE 81-6 (as amended or superseded), as well as to applicable securities laws of the United States, Germany, the United Kingdom, Japan, Canada, and/or Australia, as appropriate.

(o) Only Plans with total assets having an aggregate market value of at least \$50 million are permitted to lend securities to the Borrowers—provided, however, that

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations, or employee organization, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are “plan assets” under 29 CFR 2510.3-101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Borrowers, the foregoing \$50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million—provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations, or employee organization, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are “plan assets” under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrowers, the foregoing \$50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the

employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity.

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million. (In addition, none of the entities described above is formed for the sole purpose of making loans of securities.)

(p) Prior to any Plan's approval of the lending of its securities to the Borrowers, a copy of this exemption (and the notice of pendency) is provided to the Plan, and the Borrower informs the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.³

(q) The independent fiduciary of the Plan receives monthly reports with respect to the securities lending transactions, including, but not limited to, the information set forth in the following sentence, so that an independent Plan fiduciary may monitor such transactions with the Borrowers. The monthly report will list for a specified period all outstanding or closed securities lending transactions. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or premium (if applicable) at which the security is loaned, and the number of days the security has been on loan. At the request of the Plan, such a report will be provided on a daily or weekly basis, rather than a monthly basis. Also, upon request of the Plan, the Borrower will provide the Plan with daily notifications of securities lending transactions.

(r) In addition to the above conditions, all loans involving Foreign Borrowers must satisfy the following supplemental requirements:

³ The Department notes the Borrowers' representation that, under the exclusive borrowing arrangements, neither the Borrower nor any of its affiliates will perform the essential functions of a securities lending agent, *i.e.*, the Borrowers will not be the fiduciary who negotiates the terms of the Borrowing Agreement on behalf of the Plan, the fiduciary who identifies the appropriate borrowers of the securities, or the fiduciary who decides to lend securities pursuant to an exclusive arrangement. However, the Borrowers or their affiliates may monitor the level of collateral and the value of the loaned securities.

(1) Such Foreign Borrower is subject to regulation by (i) the Bundesanstalt fuer Finanzdienstleistungsaufsicht (the BAFin) in Germany, (ii) the Financial Services Authority and the Securities and Futures Authority in the United Kingdom, (iii) the Ministry of Finance or the Financial Services Agency and the Tokyo Stock Exchange or the Osaka Stock Exchange in Japan, (iv) the Office of the Superintendent of Financial Institutions Canada, Ontario Securities Commission, and the Investment Dealers Association in Canada, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

(2) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a-6 (17 C.F.R. 240.15a-6) under the Securities Exchange Act of 1934 (the 1934 Act) that provides foreign broker-dealers a limited exception from U.S. registration requirements;

(3) All collateral is maintained in U.S. dollars or in U.S. dollar-denominated securities or letters of credit, or other collateral permitted under PTE 81-6 (as amended or superseded);

(4) All collateral is held in the United States and the situs of the Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 C.F.R. 2550.404(b)-1; and

(5) Prior to entering into a transaction involving a Foreign Borrower, the Foreign Borrower must:

(i) Agree to submit to the jurisdiction of the United States;

(ii) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(iii) Consent to the service of process on the Process Agent; and

(iv) Agree that enforcement by a Plan of the indemnity provided by the Foreign Borrower will occur in the U.S. courts.

(s) The Borrower maintains, or causes to be maintained, within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that

(1) A prohibited transaction will not be considered to have occurred if, due

to circumstances beyond the control of Deutsche Bank and/or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than the Borrower shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (t)(1).

(t)(1) Except as provided in subparagraph (t)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (s) are unconditionally available at their customary location for examination during normal business hours by

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission (SEC);

(ii) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Plan or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (t)(1)(ii)–(t)(1)(iv) are authorized to examine the trade secrets of Deutsche Bank or its affiliates or commercial or financial information which is privileged or confidential.

Section III—Definitions

(a) An *affiliate* of a person means:

(i) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with, the person. (For purposes of this paragraph, the term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(ii) Any officer, director, employee, or relative (as defined in section 3(15) of the Act) of any such other person or any partner in any such person; and

(iii) Any corporation or partnership of which such person is an officer, director, or employee, or in which such person is a partner.

(b) The term *Foreign Borrower* or *Foreign Borrowers* means Deutsche Bank or any broker-dealer or bank that, now or in the future, is a branch or an

affiliate of Deutsche Bank that is subject to regulation by (i) the BAFin in Germany, (ii) the Financial Services Authority and the Securities and Futures Authority in the United Kingdom, (iii) the Ministry of Finance or the Financial Services Agency and the Tokyo Stock Exchange or the Osaka Stock Exchange in Japan, (iv) the Office of the Superintendent of Financial Institutions Canada, Ontario Securities Commission, and the Investment Dealers Association in Canada, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

(c) The term “Borrower” or “Borrowers” means DBS, DBNY, DBT, and the Foreign Borrowers, or any branch or affiliate of Deutsche Bank that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or a U.S. bank.

Effective Date: The exemption is effective as of April 24, 2001.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, refer to the notice of proposed exemption published on July 3, 2002 at 67 FR 44625.

Written Comments

The Department received one written comment with respect to the notice of proposed exemption (the Proposal). The comment was submitted by the applicant, who requested certain clarifying modifications and additions to the operative language in the final exemption, as well as to the Summary of Facts and Representations (the Summary) in the Proposal (see 67 FR 44625). The requested modifications and additions to both the operative language and the Summary, are discussed below.

1. The applicant wished to clarify that the term “Deutsche Bank” includes its branches, such as Deutsche Bank AG, New York Branch (DBNY), and to add Deutsche Bank Trust Company Americas (DBT) to the list of covered Borrowers.

Thus, Section I(a) of the Proposal (67 FR 44625, column 3) has been revised to read as follows (note deleted and italicized language):

(1) Deutsche Bank AG (Deutsche Bank) (including the New York Branch of Deutsche Bank (DBNY)); or

(2) its affiliates Deutsche Bank Securities Inc. (DBS), Deutsche Bank [delete “AG, New York Branch (DBNY)”] *Trust Company*

Americas (DBT), [delete “and”] the “Foreign Borrowers” (as defined in Section III), and any branch or affiliate of Deutsche Bank that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or a U.S. bank (collectively, with Deutsche Bank, referred to as the “Borrowers,” as defined in Section III)

2. Similarly, Section III(b) of the Proposal (67 FR 44628, center column) defining “Foreign Borrowers” has been revised to read as follows (note deleted and italicized language):

The term “Foreign Borrower” or “Foreign Borrowers” means *Deutsche Bank* or any broker-dealer or bank that, now or in the future, is a branch or an affiliate of Deutsche Bank that is subject to regulation by (i) the BAFin [delete “BAK and the Deutsche Bundesbank”] in Germany,* * *, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

For an explanation regarding the “BAFin” and the italicized language added to the end of clause (v), above, see Comment 8, below.

3. Further, Section III(c) of the Proposal (67 FR 44628, center column) defining “Borrowers” has been revised to read as follows (note deleted and italicized language):

The term “Borrower” or “Borrowers” means [delete “Deutsche Bank”] DBS, DBNY, DBT, and the Foreign Borrowers, [delete “and”] or any [delete “other”] branch or affiliate of Deutsche Bank that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or a U.S. bank.

4. The revisions in Comment 2, above, should also be made to the corresponding paragraph in Item 1 of the Summary (67 FR 44629, column 1) (note deleted and italicized language):

Deutsche Bank requests an individual exemption to cover *DBNY, DBS, DBT*, the Foreign Borrowers identified above, as well as any [delete “broker-dealer or bank”] other branch or affiliate of *Deutsche Bank* that, now or in the future, is [delete “an affiliate of Deutsche Bank that is”] (i) a U.S. registered broker-dealer or government securities broker or dealer or a U.S. bank, or (ii) that is subject to regulation by (a) the BAFin [delete “BAK, and the Deutsche Bundesbank”] in Germany, (b) the Financial Services Authority and the Securities and Futures Authority in the United Kingdom, (c) the Ministry of Finance or the Financial Services Agency and the Tokyo Stock Exchange or the Osaka Stock Exchange in Japan, (d) the Office of the Superintendent of Financial Institutions Canada, Ontario

Securities Commission, and the Investment Dealers Association in Canada, or (e) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

5. The second sentence of Section II(h) of the Proposal (67 FR 44626, center column) regarding monitoring of the collateral has been revised to read as follows (note deleted and italicized language):

The level of the collateral is monitored daily by the Plan or its designee, which may be Deutsche Bank or any of its branches or affiliates, including [delete Deutsche Bank Trust Company Americas] DBT, which provides custodial or directed trustee services in respect of the securities covered by the Borrowing Agreement for the Plan.

Further, the words "branches or" should be added to the corresponding second sentence of the second paragraph in Item 10 of the Summary (67 FR 44631, center column).

6. The applicant wished to add the italicized language, below, to the first sentence of Section II(m) of the Proposal (67 FR 44626, column 3) regarding default by the Borrower. Thus, Section II (m) has been revised to read as follows:

In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement, the Plan or its agent will have the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price.

Further, the same addition should be made to the corresponding first sentence in Item 15 of the Summary (67 FR 44632, center column).

7. The applicant stated that the use of the term "confirmations" in Section II(q) of the Proposal connotes confirmation slips described in Rule 10b-10 under the 1934 Act, which applies to securities transactions, not to securities lending transactions. Thus, the last sentence of Section II(q) (67 FR 44627, center column) has been revised to read as follows (note deleted and italicized language):

Also, upon request of the Plan, the Borrower will provide the Plan with daily [delete "confirmations"] notifications of securities lending transactions.

Further, the same revision should be made to the corresponding last sentence in Item 10 of the Summary (67 FR 44631, column 3).

8. The applicant stated that there has been a change in the identity of the

governmental regulatory authority in Germany. Following the adoption on April 22, 2002 of the Law on Integrated Financial Services Supervision (Gesetz ueber die integrierte Finanzaufsicht—FinDAG), the Federal Authority for Financial Services Supervision (Bundesanstalt fuer Finanzdienstleistungsaufsicht—BAFin) was established on May 1, 2002. The functions of the former offices for banking supervision (Gundesaufsichtsamt fuer das Kreditwesen—BAKred), insurance supervision (Bundesaufsichtsamt fuer das Versicherungswesen—BAV), and securities supervision (Bundesaufsichtsamt fuer den Wertpapierhandel—BAWe) have been combined in a single state regulator that supervises banks, financial services institutions, and insurance undertakings across the entire financial market and comprises all the key functions of consumer protection and solvency supervision. The new BAFin has been created to ensure a consistent regulation and supervision of the financial services and markets in Germany through one single authority. The applicant also noted generally that, in foreign jurisdictions, the authority to regulate securities transactions and securities lending transactions may change from agency to agency, from time to time, or the legal name of the appropriate regulator may change.

Thus, Section II(r)(1) of the Proposal (67 FR 44627, column 3), a supplemental requirement for Foreign Borrowers, has been revised to refer to the "BAFin," as well as by adding the italicized language and the end of clause (v):

(1) Such Foreign Borrower is subject to regulation by (i) the [delete "Bundesaufsichtsamt fuer das Kreditwesen (the BAK) and the Deutsche Bundesbank"] Bundesanstalt fuer Finanzdienstleistungsaufsicht (the BAFin) in Germany, * * *, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

Further, consistent with the above (as well as Comments 2 & 4), paragraph (i) in Item 17 of the Summary (67 FR 44632, column 3), should be revised such that the Foreign Borrower may be a bank "or a broker-dealer" that is subject to regulation by the various foreign regulators listed (substituting "BAFin" for "BAK and the Deutsche Bundesbank"), as well as "any governmental regulatory authority that

is a successor in interest to any such regulator."

9. The applicant wished to correct duplicative references to Deutsche Bank, already included in the revised definitions of "Foreign Borrower" and "Borrower."

Thus, the following revisions have been made to Section II(r)(5), (r)(5)(iv), and (s) of the Proposal (67 FR 44627, column 3) (note deleted language):

(5) Prior to entering into a transaction involving a Foreign Borrower, [delete "Deutsche Bank or"] the Foreign Borrower must * * *

(iv) Agree that enforcement by a Plan of the indemnity provided by [delete "Deutsche Bank or"] the Foreign Borrower will occur in the U.S. courts.

(s) [Delete "Deutsche Bank or"] The Borrower maintains, or causes to be maintained, within the United States for a period of six years * * *

Further, the same revision should be made to Footnote 8 in Item 4 of the Summary (67 FR 44630, column 1) as follows:

Under certain circumstances described in the April 9, 1997 No-Action Letter (e.g., clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and [delete "Deutsche Bank or between a Plan and the Foreign Borrower * * *"]

10. The applicant wished to make the following correction to the third paragraph in Item 1 of the Summary (67 FR 44628, column 3) (note deleted language):

(c) Morgan Grenfell & Co., Ltd., located in London, is subject to regulation in the United Kingdom by the Financial Services Authority [delete "in respect of prudential supervision"];

11. The applicant wished to add the following sentence after the first sentence in Item 7 of the Summary (67 FR 44630, column 3):

The form of the Borrowing Agreement to be used in foreign jurisdictions will reflect appropriate local industry or market standards. [FN 11]

[FN 11] For example, the form of the Borrowing Agreement to be used in the United Kingdom differs from the standard U.S. Borrowing Agreement. Under the form Borrowing Agreement to be used in the United Kingdom, the Plan receives title to (rather than a pledge of or a security interest in) the collateral.

The applicant noted that the revisions, above, are consistent with the language of a similar recent exemption [see PTE 2002-33 (67 FR 42077, June 20, 2002)] for Morgan Stanley Dean Witter & Co. in the notice of proposed exemption relating thereto (67 FR 15241, March 29, 2002) (see 67 FR at 15245, column 3, Item 8).

12. The applicant wished to add a new Item 10 to follow Item 9 of the Summary (67 FR 44631, column 1), with the remaining items appropriately renumbered:

10. An independent fiduciary of the Plan may provide written instructions directing that the investment of any cash collateral, or any portion thereof, be managed by Deutsche Bank or any branch or affiliate thereof, or be invested in one or more mutual funds managed by Deutsche Bank or any branch or affiliate thereof. Deutsche Bank or such branch or affiliate, as applicable, may receive a reasonable and customary investment management fee, provided that the independent fiduciary of the Plan approves such compensation arrangement, after receiving written disclosure of the compensation arrangement to be paid to Deutsche Bank or such branch or affiliate, as applicable, in connection with such investment management. The independent fiduciary of the Plan may revoke such written instructions at any time. [FN 12]

[FN 12] This transaction is outside the scope of the proposed exemption. The Department notes that it is the responsibility of Deutsche Bank or such branch or affiliate to determine whether the conditions of section 408(b)(2) of the Act will be met with respect to the transaction (*i.e.*, the reasonable contract or arrangement requirement and the reasonable compensation requirement).

The applicant noted that the paragraph and footnote, above, are consistent with the language of a similar recent exemption [see PTE 2002-44 (67 FR 56597, September 4, 2002)] for Goldman, Sachs & Co. in the notice of proposed exemption relating thereto (67 FR 44633, July 3, 2002) (see 67 FR 44640, column 1, Item 16).

13. Finally, the applicant requested that the third sentence in old Item 10 of the Summary (67 FR 44631, center column), to be renumbered as Item 11, be revised to be consistent with Section II(g) of this exemption (note deleted and italicized language):

For this purpose, the collateral may be held on behalf of the Plan [delete "by"] *with a third party*, an affiliate of the Borrower, or a branch of Deutsche Bank other than the Borrower, that is [delete "the"] a trustee or custodian of the Plan.

The Department has modified the language of this exemption to reflect the applicant's clarifications to the record, as discussed above, and acknowledges such clarifications as they relate to the information contained in the Proposal, as published in the *Federal Register* on July 3, 2002.

Accordingly, based upon the information contained in the entire record, the Department has determined to grant the proposed exemption as modified herein.

For Further Information Contact: Ms. Karin Weng of the Department,

telephone (202) 693-8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of October, 2002.

Ivan Straszfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
Department of Labor.*

[FR Doc. 02-25599 Filed 10-7-02; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (02-121)]

National Environmental Policy Act; International Space Research Park at the John F. Kennedy Space Center, Florida

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and conduct scoping meetings for the

proposed International Space Research Park (ISRP) on the John F. Kennedy Space Center (KSC).

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA intends to conduct scoping and prepare an EIS for the proposed International Space Research Park (ISRP) on the John F. Kennedy Space Center (KSC). NASA is proposing an agreement with the State of Florida, through the Florida Space Authority (FSA), to allow the State of Florida to develop up to 160 hectares (400 acres) of land on KSC as a research park. The State of Florida would develop the property in phases during the next 20 to 25 years. KSC, which is located in Brevard County on the east coast of Florida, is a major locus within NASA of Shuttle and International Space Station (ISS) activities and is adjacent to Cape Canaveral Air Force Station (CCAFS) from which many NASA missions are launched. NASA's goal in developing the ISRP at KSC is to provide an opportunity for commercial, research and educational interests from both governmental and non-governmental sectors to develop new, state-of-the-art facilities to promote the expanded use of space.

The EIS will address, among other matters, the environmental impacts of the development and operation of the research park at two possible locations on KSC.

DATES: Interested parties are invited to submit comments on environmental concerns in writing on or before December 9, 2002, to assure full consideration. In addition, interested parties may attend one or both of the two public scoping meetings to be held on October 24, 2002. The first meeting will be held at the KSC Visitors Complex at 9:30 a.m. The second meeting will be held at the Florida Solar Energy Center on the Cocoa Campus of the Brevard Community College at 7 p.m.

ADDRESSES: Written comments should be addressed to Mr. Mario Busacca, Environmental Program Office, Mail Code TA-C3, Kennedy Space Center, Florida, 32899. Comments may also be sent by electronic mail to: *Mario.Busacca-1@ksc.nasa.gov*, by facsimile to Mr. Busacca's attention at 321-867-8040, or by visiting the ISRP

EIS Web page at <http://eis.ksc.nasa.gov/index.cfm>.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Busacca, Environmental Program Office, Mail Code TA-C3, Kennedy Space Center, Florida, 32899; 321-867-8456; fax, 321-867-8040; electronic mail: Mario.Busacca-1@ksc.nasa.gov. In addition, status updates and other additional information can be found on the following Web site: <http://eis.ksc.nasa.gov/index.cfm>.

SUPPLEMENTARY INFORMATION: Some of the key objectives of the KSC mission are to support development of the ISS and growth in the commercial space industry; promote and facilitate general commercial use and development of space; and continue to develop KSC as a world leader in spaceport and range technology development while maintaining the prominence in launch and landing operations of KSC and CCAFS, collectively known as the Cape Canaveral Spaceport (CCS). Towards these ends, KSC believes the development and operation of a commercial-based research park would attract and promote broad-based research and technology development activities. In addition, the development and testing activities would increase the availability of intellectual, physical, and financial resources to directly support the use and development of space and its commercial potential. This outcome would enable NASA to more efficiently perform its core research and exploration missions. Therefore, NASA is proposing to allow the State of Florida, through its FSA, to develop up to 160 hectares (400 acres) of land on KSC as a ISRP. This area would be developed and managed by the FSA for the life of the ISRP, which is up to 50 years. The FSA would seek tenants to build and operate commercial and educational facilities within the ISRP, which would be subdivided into about 24 available parcels ranging in size from approximately two to eight hectares (five to 20 acres) each.

Enterprises, both private and public wishing to engage in or support research and technology, space product development, or commercialized space services that are in alignment with the strategic direction and needs of the FSA would be invited to consider locating their laboratories and offices in the ISRP. The proposed ISRP would be unique and as such would be expected to attract a broad, but synergistic range of activities. Such activities may include university-sponsored research and education, commercial space experiment processing services, spaceport and range technology

development and support activities, international laboratories and administrative support for NASA's global partners on the space station, technical and scientific support labs, space business assistance activities, space technology brokerage activities, and business support services required by ISRP tenants. NASA envisions the ISRP as a pedestrian-friendly campus, with features to encourage interaction and collaboration among its tenants. The ISRP would manage all utilities and services for the tenants. All tenants would be required to meet strict eligibility requirements to be allowed to build in the ISRP. Heavy manufacturing or large-scale assembly of space hardware, and any operations deemed hazardous or incompatible with other ISRP users, would not be allowed. Full build-out of the ISRP is not expected for 20 to 25 years. At full build-out, the ISRP would contain facilities that represent a combined floor space of more than 185,000 square meters (2 million square feet) of research and development and related facility space and a total estimated population of approximately 10,000 workers.

An initial Memorandum of Understanding (MOU) between KSC and FSA was signed in December 2001, describing the respective roles of the partners in planning the ISRP and establishing common understandings related to the subsequent implementation and operation of the ISRP. The MOU provides that NASA fund and lead the concept development study with FSA involvement, and FSA fund and manage follow-on engineering, technical, and business studies to prepare for ISRP implementation. The proposed management approach envisioned for the ISRP is that NASA would retain ownership of the property but convey land use and development rights to the FSA for up to 50 years. The FSA would enter into long-term arrangements with ISRP tenants to enable commercially financed space industry firms and academic institutions to build and operate in the ISRP.

NASA is planning to evaluate two locations as reasonable alternatives for the proposed ISRP on KSC: the first alternative site (Alternative 1) is located south of the KSC Visitor Complex and west of Kennedy Parkway, and the second alternative site (Alternative 2) is located east of Kennedy Parkway just to the north of the south gate entrance (Gate 2) to KSC. The EIS will also consider the No Action Alternative (*i.e.*, not developing the ISRP). Alternative 1, the Proposed Action, would result in development in an area of

approximately 160 hectares (440 acres) that currently is comprised mostly of citrus groves, some of which are no longer in production. Citrus production will cease, in any event, in 2008. Alternative 1 also contains some 32 hectares (79 acres) of wetlands, not all of which would be impacted by ISRP development. Alternative 2 would result in development in an area that contains 134 hectares (332 acres) of pine flatwoods and scrub habitat and some 27 hectares (67 acres) of wetlands, not all of which would be impacted by ISRP development. Both of these locations were selected in part to accommodate the need for the ISRP to be located outside the KSC security zone to allow for 24-hour access by the tenants.

The EIS will consider the full range of potential environmental impacts associated with these alternatives. Environmental issues addressed will include, but not necessarily be limited to: land use, motor vehicle traffic, air and water quality, infrastructure and drainage, hazardous materials and site contamination, pollution prevention, geology, biological resources, noise, aesthetics, cultural resources, socioeconomic impacts (including environmental justice), and other issues identified for emphasis during the scoping process. NASA will consult with the State Historic Preservation Office during the planning process because Alternative 2 may potentially affect archeological and historic sites. NASA will also consult with the U.S. Fish and Wildlife Service regarding the potential for the ISRP to impact threatened and endangered species and critical habitat.

Dated: October 3, 2002.

Jeffrey E. Sutton,

Assistant Administrator for Management Systems.

[FR Doc. 02-25663 Filed 10-7-02; 8:45 am]

BILLING CODE 7510-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506 as follows:

Media Arts: October 24-25, 2002, Room 716 (Access and Heritage &

Preservation categories). A portion of this meeting, from 2:00 p.m. to 3:00 p.m. on October 25th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 5:30 p.m. on October 24th and from 9:30 a.m. to 2 p.m. and 3 p.m. to 4:30 p.m. on October 25th, will be closed.

Design: November 4–5, 2002, Room 716 (Access and Heritage & Preservation categories). A portion of this meeting, from 11:45 a.m. to 12:45 p.m. on November 5th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5 p.m. on November 4th and from 9 a.m. to 11:45 a.m. and 12:45 p.m. to 2:30 p.m. on November 5th, will be closed.

Opera: November 18, 2002, Room 714 (Access and Heritage & Preservation categories). A portion of this meeting, from 2:30 p.m. to 3:30 p.m., will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 2:30 p.m. and 3:30 p.m. to 4 p.m., will be closed.

Music: November 19–22, 2002, Room 714 (Access and Heritage & Preservation categories). A portion of this meeting, from 2 p.m. to 3:30 p.m. on November 22nd, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on November 19th–21st, and from 9 a.m. to 2 p.m. and 3:30 p.m. to 4:30 p.m. on November 22nd, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD

202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: October 2, 2002.

Kathy Plowitz-Worden,

*Panel Coordinator, Panel Operations,
National Endowment for the Arts.*

[FR Doc. 02–25607 Filed 10–7–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel, AccessAbility Section, will be held by teleconference from 12 p.m.–12:30 p.m. on Tuesday, October 22, 2002 in Room 528 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: October 2, 2002.

Kathy Plowitz-Worden,

*Panel Coordinator, Panel Operations,
National Endowment for the Arts.*

[FR Doc. 02–25608 Filed 10–7–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management Renewal

The NSF management officials having responsibility for the Oversight Council for the International Arctic Research

Center (#9535) have determined that renewing this group for another year is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation by 42 USC 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

For more information contact Susanne Bolton at (703) 292–7488.

Dated: October 1, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–25501 Filed 10–07–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering—(1115).

Date and Time: October 25, 2002: 8 a.m. to 3:45 p.m.

Place: Hilton Arlington and Towers, Master Ballroom, 950 N. Stafford Street, Arlington, VA 22203.

Type of Meeting: Open.

Contact Person: Gwen Barber-Blount, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington, VA 22230. Telephone: (703) 292–8900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director/CISE on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Report from the Assistant Director. Discussion of Information Technology Research. CISE activity related to Homeland Security, NSF's Career Program, Cyber Infrastructure, use of panel reviews, and discussion of the COV report on the PACI program.

Dated: October 3, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–25601 Filed 10–7–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION**Advisory Committee for Engineering;
Notice of Meeting; Correction**

Correction: The National Science Foundation published a document in the **Federal Register** of October 1, 2002 on page 61670, 2nd column concerning the notice of meeting for advisory committee #1170. The subject heading and name of the committee should read "Advisory Committee for Engineering." Below is the corrected notice.

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended) the National Science Foundation announces the following meeting.

Name and Committee Code: Advisory Committee for Engineering (#1170).

Date and time: October 17, 2002/8:30 a.m.–5 p.m.; October 18, 2002/8:30 a.m.–12 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Stafford II, Room 555.

Type of Meeting: Open.

Contact Person: Dr. Elbert L. Marsh, Deputy Assistance Director for Engineering, National Science Foundation, Suite 505, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone: (703) 292-4609. If you are attending the meeting and need access to the NSF building, please contact Maxine Byrd at 703-292-4601 or at mbyrd@nsf.gov so that your name can be added to the building access list.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to Engineering programs and activities.

Agenda: The principal focus of the forthcoming meeting will be on strategic issues, both for the Directorate and the Foundation as a whole. The Committee will also address matters relating to the future of the engineering profession, and engineering education.

Dated: October 1, 2002

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02-25502 Filed 10-07-02; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION**Directorate for Mathematical and
Physical Sciences Advisory
Committee; Notice of Meeting**

Name: Directorate for Mathematical and Physical Sciences Advisory Committee (MPSAC).

Date/Time: November 6, 2002, 12-5; November 7, 2002, 8:30 AM-6 PM; November 8, 2002, 8:30 AM-3 PM.

Place: November 6, 2002, Stafford Building II, Room 595, 4121 Wilson Boulevard, Arlington, VA. November 7-8, 2002, 4201

Wilson Boulevard, Arlington, VA 22230, Room 375.

Type of Meeting: Open.

Contact Person: Dr. Morris L. Aizenman, Senior Science Associate, Directorate for Mathematical and Physical Sciences, Room 1005, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292-8807.

Purpose of Meeting: To provide advice and recommendations concerning NSF science and education activities within the Directorate for Mathematical and Physical Sciences.

Agenda: November 6: Briefing to New MPSAC members. November 7-8: Briefing on current status of Directorate. Meeting with members of the Education and Human Resources Directorate Advisory Committee. Discussion of MPS Activities with respect to MPSAC Recommendations concerning responses to the Hart-Rudman Report Discussion of MPS International Activities. Meeting of MPSAC with Divisions within MPS Directorate.

Dated: October 1, 2002.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 02-25503 Filed 10-7-02; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION**Membership of National Science
Foundation's Senior Executive Service
Performance Review Board**

AGENCY: National Science Foundation.

ACTION: Announcement of membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Director, Division of Human Resource Management, National Science Foundation, Room 315, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Wilkinson, Jr., at the above address or (703) 292-8180.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Joseph Bordogna, Deputy Director, Chairperson
Mary E. Clutter, Assistant Director for Biological Sciences
Karl A. Erb, Director, Office of Polar Programs
Nathaniel Pitts, Director, Office of Integrative Activities

Dated: October 3, 2002.

John F. Wilkinson, Jr.,

Director, Division of Human Resources Management.

[FR Doc. 02-25602 Filed 10-7-02; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION**Membership of National Science
Foundation's Office of Inspector
General Senior Executive Service
Performance Review Board**

AGENCY: National Science Foundation.

ACTION: Announcement of membership of the National Science Foundation's Performance Review Board for Office of Inspector General Senior Executive Service positions.

SUMMARY: This announcement of the membership of the National Science Foundation's Office of Inspector General Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Director, Division of Human Resource Management, National Science Foundation, Room 315, 4210 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Wilkinson, Jr., at the above address or (703) 292-8180.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Office of Inspector General Senior Executive Service Performance Review Board is as follows: Mark S. Wrighton, Chairman, Audit and Oversight Committee, National Science Board, Chairperson Nathaniel Pitts, Director, Office of Integrative Activities Bruce Umminger, Senior Scientist, Office of Integrative Activities.

Dated: October 3, 2002.

John F. Wilkinson, Jr.,

Director, Division of Human Resource Management.

[FR Doc. 02-25603 Filed 10-7-02; 8:45 am]

BILLING CODE 7555-01-M

**NUCLEAR REGULATORY
COMMISSION**

[Docket Nos. 50-254 and 50-265]

**Exelon Generation Company, LLC;
Notice of Consideration of Issuance of
Amendment to Facility Operating
License, Proposed No Significant
Hazards Consideration Determination,
and Opportunity for a Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of an amendment to Facility Operating License Nos. DPR-29 and DPR-30 issued to Exelon Generation Company, LLC (Exelon, the licensee), for operation of the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, IL.

The proposed amendment would revise the Updated Safety Analysis Report (UFSAR) to allow lifting heavier loads with the reactor building crane during the Unit 1 refueling outage beginning in November 2002.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), § 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will allow use of the reactor building crane at Quad Cities Nuclear Power Station (QCNPS) during power operations to lift heavy loads up to 125 tons for removal and re-installation activities for the reactor cavity shield blocks during the Unit 1 refueling outage (*i.e.*, Q1R17). The reactor building crane has additional margin for a total lifted load of 125 tons with single failure-proof features if a Design Basis Earthquake (DBE) is not assumed. Exelon has qualitatively demonstrated that the probability of a DBE occurring during the limited duration (estimated to be 24 hours) of the request is very small. The probability of load drop accidents previously evaluated is not increased since the capacity of the reactor building crane equals or exceeds the weight of the reactor cavity shield blocks.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes allow use of the QCNPS reactor building crane for a limited duration to lift heavy loads up to a total of 125 tons during removal and re-installation activities for the reactor cavity shield blocks. The reactor building crane has additional margin for a lifted load of 125 tons with single failure-proof features if a DBE is not assumed. The probability of a DBE during the limited duration of the request is very small. Therefore, the single failure-proof features ensure that the proposed changes provide an equivalent level of safety and will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The reactor building crane is rated for lifting loads up to 125 tons. The NRC has approved qualification of the QCNPS reactor building crane as single failure-proof for loads of up to 110 tons. The proposed change allows use of the crane for a limited duration to lift loads up to 125 tons. Existing safety margins are enhanced when lifting loads up to 125 tons if a DBE is not assumed, and Exelon has demonstrated that the probability of a DBE during the limited duration of the request is very small. Therefore, it is concluded that the proposed changes do not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 7, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,¹ which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of

¹ The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 1, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 2nd day of October, 2002.

For the Nuclear Regulatory Commission.

Carl F. Lyon,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02-25605 Filed 10-7-02; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of October 7, 14, 21, 28, November 4, 11, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 7, 2002

There are no meetings scheduled for the Week of October 7, 2002.

Week of October 14, 2002—Tentative

There are no meetings scheduled for the Week of October 14, 2002.

Week of October 21, 2002—Tentative

There are no meetings scheduled for the Week of October 21, 2002.

Week of October 28, 2002—Tentative

Wednesday, October 30, 2002

2 p.m.

Discussion of Security issues
(Closed—Ex. 1 & 9)

Thursday, October 31, 2002

9:25 a.m.

Affirmation Session (Public Meeting)
(If needed)

9:30 a.m.

Briefing on EEO Program (Public Meeting)
2:30 p.m.

Briefing on Proposed Rulemaking to Add New Section 10 CFR 50.69, "Risk-Informed Categorization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors" (Public Meeting)

This meeting will be webcast live at the Web address <http://www.nrc.gov>.

Week of November 4, 2002—Tentative

There are no meetings scheduled for the Week of November 4, 2002.

Week of November 11, 2002—Tentative

There are no meetings scheduled for the Week of November 11, 2002.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292.

CONTACT PERSON FOR MORE INFORMATION:
R. Michelle Schroll (301) 415-1662.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/what-we-do/policy-making/schedule.html>.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: October 3, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02-25656 Filed 10-4-02; 10:48 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46581; File No. SR-Amex-2002-50]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to Trading of Trust Issued Receipts and "Other Securities"

October 1, 2002.

I. Introduction

On May 31, 2002, the American Stock Exchange LLC ("Amex or Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant

to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change relating to the trading by regular members in securities listed pursuant to Section 107 of the Amex Company Guide (Other Securities) and Amex Rule 1200 (Trust Issued Receipts). On July 8, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.³ The amended proposed rule change was published for comment in the **Federal Register** on Wednesday, July 31, 2002.⁴ The Commission received no comments on the proposed rule change.

II. Description of the Proposed Rule Change

The Amex proposed to amend Amex Rule 958, Commentary .10 relating to trading by regular members in Other Securities and Trust Issued Receipts. In its proposal, the Exchange noted that in 1992, the Commission approved Amex Rule 958, Commentary .10 relating to trading on the Floor in "derivative products," index warrants, and currency warrants.⁵ Commentary .10 requires that these securities be traded by Registered Traders under Amex Rule 958, which relates to trading by Registered Options Traders ("ROTs"). Commentary .10 also states that index warrants and currency warrants may be traded by ROTs who are regular members. Options Principal Members ("OPMs") and Limited Trading Permit Holders ("LTPs") are permitted to trade derivative products under Amex Rule 958, but are not permitted to trade index or currency warrants. All of these securities must be traded under Amex Rule 958 only and cannot be traded by Registered Equity Traders ("RETs") or Registered Equity Market Makers ("REMMs") under Amex Rules 111 or 114.⁶ The "derivative products" traded by Registered Traders under Amex Rule 958 include all

exchange-traded funds listed under Amex Rules 1000 and 1000A, including, for example, Nasdaq 100 Index Tracking Stock™, SPDRs®, DIAMONDS®, iShares™, and Select Sector SPDRs®.

Pursuant to Amex Rule 958, Commentary .10, regular members trading derivative products, index warrants, and currency warrants as ROTs are subject to continuous market making obligations. As such, ROTs receive market maker margin. OPMs and LTPs are also permitted to trade derivative products pursuant to Article I, Section 3 and Article IV, Section 1(h), respectively, of the Amex Constitution, and, because their trading under Amex Rule 958 also requires ongoing market making obligations, OPMs and LTPs also receive market maker margin.⁷

According to the Exchange, when it first authorized trading in derivative products by OPMs and LTPs in 1990, it specifically intended to encourage trading crowds and competitive market making to develop in such products as SuperTrust securities (which represented interests in actual portfolios of securities such as the S&P 500 Index) and SPDRs®, which were then under development by the Exchange. In the Exchange's Rule 19b-4 filing with the Commission to authorize such OPM and LTP trading, the Exchange stated that the definition of derivative products was not intended to include products that OPMs and LTPs were not entitled to trade at that time, including currency warrants, index warrants, or closed-end mutual funds.⁸

The Exchange proposes to amend Amex Rule 958, Commentary .10 to clarify that "structured products" and Trust Issued Receipts (HOLDERSSM) traded under Amex equity trading rules must be traded under Amex Rule 958 and only by registered traders who are regular members. Structured products include all securities listed under Section 107 of the Amex Company Guide (e.g., Index-Linked Notes (MITTS®, BOXESSSM, TIERSSM); Equity-Linked Term Notes (e.g., GOALS, ELKSSM, SPARQSSM, STRIDESSM) and Trust Preferred Securities (e.g., TOPRS)).

⁷ OPMs also can trade stock options and index options. LTPs can trade index options but not stock options. As previously mentioned, OPMs and LTPs also may trade derivative products, but are not permitted to trade index or currency warrants. Derivative products cannot be traded by persons registered as RETs or REMMs under Amex Rules 111 or 114. REMMs are not subject to Amex Rule 958 type continuous market making obligations and do not receive "good faith" market maker margin, but instead are subject to full customer margin requirements.

⁸ See Securities Exchange Act Release No. 28612 (November 14, 1990), 55 FR 48308 (November 20, 1990) (File No. SR-Amex-90-17).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Claire McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 3, 2002 ("Amendment No. 1"). Amendment No. 1 deleted a proposed technical change to Amex Rule 958.

⁴ Securities Exchange Act Release No. 46251 (July 24, 2002), 67 FR 49724.

⁵ Securities Exchange Act Release No. 30768 (June 2, 1992), 57 FR 24277 (June 8, 1992) (File No. SR-Amex-92-06).

⁶ The term "derivative products" is defined in Article I, Section 3(d) of the Exchange Constitution to include standardized options and "other securities which are issued by The Options Clearing Corporation or another limited purpose entity or trust, and which are based solely on the performance of an index or portfolio of other publicly traded securities." The definition explicitly excludes warrants of any type and closed-end funds.

Trust Issued Receipts include HOLDRSSM and are listed under Amex Rules 1200 *et seq.* Therefore, the Exchange represents that these securities are ineligible to be traded either (1) by OPMs or LTPs; or (2) by RETs or REMMs under Amex Rules 111 and 114.⁹ The Exchange believes that permitting regular member ROTs to trade structured products and HOLDRSSM under Amex Rule 958 will promote additional market depth and liquidity. According to the Amex, structured products and Trust Issued Receipts do not fall within the definition of "derivative products" as contemplated by the Exchange in authorizing OPMs and LTPs to trade derivative products; therefore, OPMs and LTPs are not permitted to trade those products. The Exchange proposal would clarify Amex Rule 958 to reflect this position.¹⁰

III. Discussion of the Proposed Rule Change

The Exchange's proposal would amend Amex Rule 958, Commentary .10 to clarify that structured products and Trust Issued Receipts rules must be traded under Amex Rule 958 and only by registered traders who are regular (*i.e.*, full) members. The proposed rule change would codify current practice, which affects REMMs, RETs, OPMs, and LTPs. Under the current practice, REMMs and RETs, which are regular members of the Exchange, must register under Amex Rule 958 in order to trade structured products or Trust Issued Receipts; LTPs and OPMs, which are not regular members, are not permitted to trade those products.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act¹¹ and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the

⁹ However, because RETs and REMMs are regular members of the Exchange, they may, after registering under Amex Rule 958, trade structured products and Trust Issued Receipts under Amex Rule 958. Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel and Steven Johnston, Special Counsel, Division, Commission, on July 22, 2002.

¹⁰ The Exchange also originally proposed a technical change to Amex Rule 958. The Exchange withdrew the proposed technical change in Amendment No. 1. The proposed technical change was unnecessary because it had been previously proposed by the Amex and approved by the Commission. (See Securities Exchange Act Release No. 45320 (January 18, 2002), 67 FR 3921 (January 28, 2002) (File No. SR-Amex-2001-79).

¹¹ 15 U.S.C. 78f(b).

Act,¹² which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

When an individual REMM, RET, or other regular member of the exchange registers under Amex Rule 958, he or she becomes a competing market maker with continuous affirmative market making obligations. The individual also receives "good faith" margin, which permits the individual to finance up to 100% of his or her securities positions' market value.¹³ Entitlement to good faith margin may serve to attract regular members to trade structured products and Trust Issued Receipts, which, in turn may provide increased depth and liquidity to the markets for those products. Greater depth and liquidity contribute to better executions, a result which is consistent with the protection of investors and the public interest.

The Exchange does not permit either structured products or Trust Issued Receipts to be traded by OPMs or LTPs. OPMs and LTPs have authority to trade "derivative products," as defined in the Amex Constitution and interpreted by the Amex Board of Governors. The Amex observes that when it proposed to allow OPMs and LTPs to trade derivative products, it explicitly stated that its proposal was not intended to expand OPM and LTP trading privileges beyond products that OPMs and LTPs were trading at that time. OPMs and LTPs were not trading structured products and Trust Issued Receipts; those products were not in existence when the Exchange proposed to allow OPMs and LTPs to trade derivative products. Moreover, the Amex represents that the definition of derivative products contemplates only products that are based on open-ended, managed indexes or portfolios registered under the Investment Company Act of 1940.¹⁴ Structured products and Trust Issued Receipts do not satisfy those criteria.¹⁵

¹² 15 U.S.C. 78f(b)(5).

¹³ Good faith margin, as defined in Regulation T, issued by the Board of Governors of the Federal Reserve System, as the amount of margin which a creditor, exercising sound judgment, would customarily require for a specified security position and which is established without regard to the customer's other assets or securities positions held in connection with unrelated transactions. See 12 CFR 220.2. In lieu of margin that otherwise would be required, good faith margin permits a trader to finance up to 100% of his or her securities positions' market value.

¹⁴ 15 U.S.C. 80a-1 *et seq.*

¹⁵ Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and

The Commission finds that it is within the Exchange's discretion to assign or limit trading rights based on type of product and class of membership, as long as the procedures adopted are not inconsistent with the purposes of the Act.¹⁶ In this regard, the Exchange has articulated a legitimate business purpose of attracting registered traders to trade structured products and Trust Issued Receipts. The Commission therefore finds the Exchange's proposed rule change clarifying current practice to be consistent with the Act.¹⁷

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act¹⁸ that the proposed rule change (SR-Amex-2002-50) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-25611 Filed 10-7-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46580; File No. SR-BSE-2002-14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange Relating to an Interpretation of its Execution Guarantee Rule

October 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 5, 2002, the Boston Stock Exchange, Inc. ("BSE" 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 self-regulatory organization.

The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

Steven Johnston, Special Counsel, Division, Commission, on September 4, 2002.

¹ 15 U.S.C. 78f(b). See Securities Exchange Act Release No. 28612 (November 14, 1990), 55 FR 48308 (November 20, 1990) (File No. SR-Amex-90-17).

² 15 U.S.C. 78f(b).

³ 15 U.S.C. 78s(b)(2).

⁴ 17 CFR 200.30-3(a)(12).

⁵ 15 U.S.C. 78s(b)(1).

⁶ 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement an interpretation of its Execution Guarantee Rule in response to Commission action regarding *de minimis* trades through of certain Exchange Traded Funds ("ETFs") in ITS. The text of the proposed rule change is available at the Office of the Secretary, BSE, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to add Paragraph .07 to the Interpretations and Policies section of Chapter II, *Dealings on the Exchange*, Section 33, *Execution Guarantee*, of the BSE Rules. This proposed rule change is in response to a Commission Order issued August 28, 2002, granting a *de minimis* exemption for transactions in certain ETFs from the Trade-Through Provisions of the Intermarket Trading System ("ITS") Plan ("Order").³

As of the implementation date of the Order, September 4, 2002, certain executions that take place according to the rules of the Exchange may be deemed violative of the provisions thereof. Accordingly, the Exchange is seeking to implement this proposed rule change to run commensurate with the pilot period outlined in the Order, or until such longer time as the Commission may deem appropriate in

³ See Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002). Participants of the ITS Plan are exempt from Section 8(d) of the Plan for the period of September 4, 2002 until June 4, 2003 with respect to transactions in QQQs, DIAMONDS, and SPDRs, that are executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS.

conjunction with any further related action concerning this issue.

In Chapter II, *Dealings on the Exchange*, Section 33, *Execution Guarantee* of the BSE Rules, paragraph (c)(2) states that "All agency limit orders will be filled if one of the following conditions occur * * * (2) there has been price penetration of the limit in the primary market * * *." Moreover, in various sections of Chapter XV, *Dealer Specialists*, there are similar provisions.⁴ These provisions, in particular those set forth in Chapter II, guarantee that a limit order in a BSE specialist's book will be filled if the primary market trades through the limit price. The BSE specialist provides this protection to its customer limit orders in part due to the fact that the specialist can seek relief through ITS in the event of a trade-through.

As a result of the Commission's Order, certain primary market trades-through in ETFs will constitute exempt trades-through, but will still, under BSE Rules, trigger an obligation on the part of a BSE specialist to provide trade-through protection. However, the specialist will no longer be able to seek recourse to seek satisfaction through ITS from the primary market. Accordingly, the BSE specialist will be competitively disadvantaged if this section of its rules is strictly enforced, while the *de minimis* exemption exists for other ITS participants. Therefore, the BSE is seeking to implement an Interpretation of Chapter II, Section 33(c)(2) of its rules permitting the Exchange to not enforce the provision following a *de minimis* trade through of certain ETFs outlined in the Order.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act⁵ and furthers the objectives of section 6(b)(5),⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and

⁴ See, e.g., Commentary to Section 1, *Specialists*, which sets forth a specialist's obligations in relation to buying and selling on a principal basis while holding unexecuted orders in his book; Section 2, *Responsibilities*, which sets forth, in part, a specialist's primary duties as agent; Section 4, *Precedence to Orders in the Book*, which sets forth the precedence parameters a specialist must adhere to; and Section 18, *Procedures for Competing Specialists*, which sets forth, in various paragraphs, obligations which may conflict with the *de minimis* exemption in the Order.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general, in that it is designed to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to the File No. SR-BSE-2002-14 and should be

submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-25612 Filed 10-7-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46582; File No. SR-CBOE-2002-53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending Its Rules To Provide Notice of Benefits of Membership and Attendant Obligations

October 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on September 9, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to add a rule provision setting forth that each CBOE member and Option Trading Permit holder (until such permit expires) with trading rights on CBOE (i) is a member of OneChicago, LLC, and (ii) to the extent provided in OneChicago rules, becomes bound by OneChicago rules and subject to jurisdiction of OneChicago by accessing or entering any order into the OneChicago System.

Below is the text of the proposed rule change. Proposed new language is italicized and proposed deletions are in brackets.

* * * * *

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

RULE 3.28. Reserved.

Membership in OneChicago, LLC

RULE 3.29. Each member and Option Trading Permit holder (until such permit expires) with trading rights on the Exchange is a member of OneChicago, LLC, and to the extent provided in OneChicago rules, becomes bound by OneChicago rules and subject to jurisdiction of OneChicago by accessing or entering any order into the OneChicago System.

Extension of Time Limits

RULE 3.30 [3.28]. Any time limit imposed on an applicant, member, or other person under this Chapter may be extended by the Membership Committee in the event that the Membership Committee determines that such an such extension is warranted due to extenuating circumstances.

Delegation of Authority

RULE 3.31 [3.29].(a) All of the authority granted to the Exchange under this Chapter may be exercised by the Membership Committee and/or the Membership Department.

(b) The Membership Committee may delegate to the Membership Department any of the authority that is granted to the Membership Committee under the Rules.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OneChicago, LLC is a joint venture formed by CBOE, the Chicago Mercantile Exchange, and the Chicago Board of Trade to provide a market for trading security futures products.

OneChicago has been conditionally designated by the Commodity Futures Trading Commission as a contract market under the Commodity Exchange Act and is in the process of registering with the Commission as a national securities exchange under section 6(g) of the Act.³

One of CBOE's primary goals in participating in the formation of OneChicago was to provide CBOE's membership with access to a market for trading security futures products. Accordingly, OneChicago Rule 132⁴ provides that any person or entity with full member trading rights or option trading permits (until such permits expire) on CBOE is a member of OneChicago. A person or entity with full member trading rights on CBOE is a CBOE member with the right to enter into securities transactions at the CBOE. These persons and entities include CBOE members in a number of CBOE membership capacities including, among others, those CBOE members with an authorized floor function (*i.e.*, are approved to act as a CBOE Market-Maker and/or Floor Broker), lessees of CBOE memberships, Chicago Board of Trade exercisers, CBOE Clearing Members, and CBOE member organizations approved to transact business with the public. A person or entity with option trading permits (until such permits expire) is an Option Trading Permit holder under CBOE Rule 3.27 that is not a lessor of the Option Trading Permit.

Additionally, OneChicago Rule 307(a) provides, in pertinent part, that by accessing, or entering any order into, the OneChicago System, and without any need for any further action, undertaking or agreement, a OneChicago member agrees (i) to be bound by, and comply with, OneChicago rules, the rules of any OneChicago clearing corporation, and applicable law, to the extent applicable to it, and (ii) to become subject to the jurisdiction of OneChicago with respect to any and all matters arising from, related to, or in connection with, the status, actions, or omissions of that OneChicago member.

In this regard, CBOE proposes to add a CBOE rule provision setting forth that each CBOE member and Option Trading Permit holder (until such permit expires) with trading rights on CBOE (i)

³ 15 U.S.C. 78f(g).

⁴ The CBOE's original filing referred to OneChicago Rule 129. The CBOE represents that the OneChicago rules have since been amended and the correct reference should now be to OneChicago Rule 132. Telephone conversation between Arthur B. Reinstein, Legal Division, CBOE, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on September 24, 2002.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

is a member of OneChicago, LLC, and (ii) to the extent provided in OneChicago rules, becomes bound by OneChicago rules and subject to jurisdiction of OneChicago by accessing or entering any order into the OneChicago System. This rule provision would be set forth in new CBOE Rule 3.29.⁵

The primary purpose of this proposed rule change is two-fold. First, the right to trade on and to be a member of OneChicago is a benefit granted to CBOE members with trading rights on CBOE, and CBOE desires to provide notice of this benefit of CBOE membership in CBOE's rules. Second, CBOE desires to provide notice to CBOE members in the CBOE rules that by accessing or entering an order into the OneChicago System, a CBOE member will become bound by OneChicago rules and subject to the jurisdiction of OneChicago. In the absence of CBOE Rule 3.29, CBOE members would still be bound by OneChicago rules and subject to the jurisdiction of OneChicago by accessing or entering an order into the OneChicago System by virtue of OneChicago Rule 307(a). It is also the case that CBOE members will have notice of these provisions in the OneChicago rules and through other means such as circulars and educational sessions conducted in connection with the launch of trading on OneChicago. However, CBOE believes that it is important to also include notice of these provisions in CBOE's rules to further ensure that CBOE members, applicants for CBOE membership, and prospective CBOE members are aware of these provisions.

Although proposed CBOE Rule 3.29 would fall within the scope of the consent form that new CBOE members sign and that current CBOE members have previously signed to the effect that they agree to abide by CBOE rules as they shall be in effect from time to time, OneChicago would continue to be responsible for enforcing its own rules. It is not intended that CBOE would enforce OneChicago rules by virtue of adopting proposed CBOE Rule 3.29, and CBOE would not be assuming any responsibility or obligation to enforce OneChicago rules, or compliance by CBOE members with those rules, by virtue of this rule change. Nevertheless, OneChicago would be a third party beneficiary of proposed CBOE Rule 3.29 and would be able to rely upon the agreement by CBOE members to be

subject to proposed CBOE Rule 3.29 in enforcing OneChicago rules, in addition to the authority granted by OneChicago rules themselves.

In this regard, proposed CBOE Rule 3.29 is similar to other CBOE rules which provide important notices to CBOE members and others by including those notices in CBOE's rules and in which other parties are third party beneficiaries of those CBOE rules. For example, CBOE Rule 24.14 sets forth disclaimers of warranty and liability that are applicable with respect to reporting authorities for index options that are traded on CBOE. In addition, CBOE Rule 6.7A generally provides that CBOE members may not institute a lawsuit against, among others, CBOE contractors for actions taken or omitted to be taken in connection with the official business of CBOE.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act⁶ in general and furthers the objectives of section 6(b)(5) of the Act⁷ in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and to promote just and equitable principles of trade by further ensuring that CBOE members are aware of an important benefit of CBOE membership and of important obligations that are applicable to those who utilize that benefit.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from September 9, 2002, the date on which it was filed, the proposed rule change has become effective pursuant to

section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

Under Rule 19b-4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The CBOE provided the Commission with notice of intent to file at least five days prior to filing the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-2002-53 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-25610 Filed 10-7-02; 8:45 am]

BILLING CODE 8010-01-P

⁵ Current CBOE Rules 3.28 and 3.29 would be re-numbered as CBOE Rules 3.30 and 3.31, respectively. The rule change would leave Rule 3.28 reserved for future use.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46576; File No. SR-NYSE-2002-19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Customer Portfolio and Cross-Margining Requirements

October 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 13, 2002, the New York Stock Exchange, Inc. ("NYSE" 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 Exchange. On August 21, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 431 to permit self-clearing members and member organizations to margin listed, broad-based, market index options, index warrants and related exchange-traded funds according to a prescribed portfolio margin methodology relating to a portfolio margin account of a registered broker-dealer, any affiliate of a self-clearing member or member organization, certain qualified members of a national futures exchange, and any other person or entity that maintains account equity of at least \$5 million.

The Exchange further proposes to amend NYSE Rule 726 to require that a disclosure statement and written acknowledgement for use with the proposed portfolio margining and cross-margining changes be furnished to customers.

The text of the proposed rule change is available at the Office of the Secretary, NYSE, at the Commission, and on the Commission's Web site.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Background

NYSE Rule 431 generally prescribes minimum maintenance margin requirements for customer accounts held at members and member organizations. In April 1996, the Exchange established the Committee to assess the adequacy of NYSE Rule 431 on an ongoing basis, review margin requirements, and make recommendations for change. A number of proposed amendments resulting from the Committee's recommendations have been approved by the Exchange's Board of Directors since the Committee was established. Similarly, the proposed amendments discussed below have been recommended by the Committee and have been adopted by the Exchange in this proposal, as amended.⁴ The Exchange represents that the proposed portfolio margin and cross-margin rules have been developed in conjunction with the CBOE, The Options Clearing Corporation, the American Stock Exchange, LLC, the Board of Trade of the City of Chicago, Inc., the Chicago Mercantile Exchange, Inc., and the National Association of Securities Dealers, Inc.

b. Portfolio Margin

The Exchange proposes to amend NYSE Rule 431 to expand the scope of its margin rule by providing a portfolio margin methodology for listed, broad-based market index options, index

warrants and related exchange-traded funds. The Exchange believes that the proposed amendments would allow clearing members and member organizations to extend to eligible customers portfolio margin methodology as an alternative to the current strategy-based margin requirements. The Exchange further believes that the proposed rule would also allow broad-based market index futures and options on such futures to be included in a portfolio margin account, thus providing a cross-margin capability. The Exchange proposes to introduce the amendments as a two-year pilot program that would be available on a voluntary basis to member organizations.

Portfolio margining is a margin methodology that sets margin requirements for an account based on the greatest projected net loss of all positions in a product class or group as determined by the Commission-approved options pricing model using multiple pricing scenarios. These scenarios are designed to measure the theoretical loss of the positions given changes in both the underlying price and implied volatility inputs to the model. Accordingly, the margin required is based on the greatest loss that would be incurred in a portfolio if the value of its components move up or down by a predetermined amount.

The Exchange represents that the purpose and benefit of portfolio margining is to efficiently set levels of margin that more precisely reflect actual net risk of all positions in the account. A customer benefits from portfolio margining in that margin requirements calculated on net position risk are generally lower than strategy-based margin methodologies currently in place. In permitting margin computation based on actual net risk, members and member organizations will no longer be required to compute margin requirement for each individual position or strategy in a customer's account.

However, as a pre-condition to permitting portfolio margining, the member or member organization would be required to establish procedures and guidelines to monitor credit risk to the member or member organization's capital, including intra-day credit risk, and stress testing of portfolio margin accounts. Further, members and member organizations would have to establish procedures for regular review and testing of these required risk analysis procedures.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mary Yeager, Assistant Secretary, NYSE, to T.R. Lazo, Senior Special Counsel, Division of Market Regulation, Commission, dated August 20, 2002 ("Amendment No. 1"). In Amendment No. 1, the NYSE made technical corrections to its proposed rule language to eliminate any inconsistencies between its proposal and the Chicago Board Options Exchange, Inc.'s ("CBOE") proposal pursuant to the rule 431 Committee's ("Committee") recommendations. See Securities Exchange Act Release No. 45630 (March 22, 2002), 67 FR 15263 (March 29, 2002) (File No. SR-CBOE-2002-03) ("CBOE Proposal").

⁴ Many aspects of the proposed rule change are similar to the CBOE's proposed rule change to permit customer portfolio margining and cross-margining. See CBOE Proposal, *supra* note 3.

c. Cross-Margining Capability

In addition, the proposed rule change permits a clearing member or member organization to establish a separate portfolio margin account (securities margin account) exclusively for cross-margining. In this regard, related index futures and options on such futures would be allowed to be carried in the portfolio margin account, thus affording a cross-margin capability. In a portfolio margin account that is used exclusively for cross-margining, separate portfolios may be established containing index options, index warrants and exchange-traded funds structured to replicate the composition of the index underlying a particular portfolio, as well as related index futures and options on such futures.

To determine theoretical gains and losses, and resulting margin requirements, the same portfolio margin computation procedure will be applied to portfolio margin accounts that contain a cross-margin element.

d. Disclosure Document and Customer Attestation

Exchange Rule 726 prescribes requirements for the delivery of options disclosure documents concerning the opening of customer accounts. As proposed by the Exchange, members and member organizations would be required to provide every portfolio margin customer with a written risk disclosure statement at or prior to the initial opening of a portfolio margin account. The disclosure statement is divided into two sections, one dealing with portfolio margining, and the other with cross-margining.

The statement would disclose the risk and operation of portfolio margin accounts, including cross-margining, and the differences between portfolio margin and strategy-based portfolio requirements. The disclosure statement would also address who is eligible to open a portfolio margin account, the instruments that are allowed, and when deposits to meet margin and minimum equity are required.

Included within the portfolio margin section of the disclosure statement would be a list of certain of the risks unique to portfolio margin accounts, such as: increased leverage; shorter time for meeting margin; involuntary liquidation if margin not received; inability to calculate future margin requirements because of the data and calculations required; and that long positions are subject to a lien. The risks and operation of a cross-margin feature are delineated in the cross-margin section of the disclosure statement, and

a list of certain of the risks associated with cross-margining will be included as well.

In addition, at or prior to the time a portfolio margin account is initially opened, members and member organizations would be required to obtain a signed acknowledgement regarding certain implications of portfolio margining (e.g., treatment under SEC Rules 8c-1, 15c2-1 and 15c3-3 under the Act) from the customer. Further, prior to providing cross-margining, members and member organizations would be required to obtain a second signed customer acknowledgement relative to the segregation treatment for futures contracts and Securities Investor Protection Corporation coverage.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with section 6(b) of the Act⁵ in general, and furthers the objectives of section 6(b)(5) of the Act⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investor and the public interest. In addition, the Exchange believes that section 6(b)(5) of the Act⁷ requires that the rules of an exchange foster cooperation and coordination with persons engaged in regulating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to

90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-2002-19 and should be submitted by October 21, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-25609 Filed 10-7-02; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 4149]

Culturally Significant Objects Imported for Exhibition; Determinations: "Millet to Matisse: Nineteenth-and-Twentieth-Century French Painting From Kelvingrove Art Gallery, Glasgow"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 17 CFR 200.30-2(a)(12).

2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, "Millet to Matisse: Nineteenth-and-Twentieth-Century French Painting from Kelvingrove Art Gallery, Glasgow," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Speed Art Museum, Louisville, Kentucky, from on or about November 6, 2002, to on or about February 2, 2003, The Frick Art and Historical Center, Pittsburgh, Pennsylvania, from on or about February 26, 2003, to on or about May 25, 2003, the Joslyn Art Museum, Omaha, Nebraska, from on or about June 18, 2003, to on or about September 14, 2003, The Albuquerque Museum, Albuquerque, New Mexico, from on or about October 8, 2003, to on or about January 4, 2004, the Kalamazoo Institute of the Arts, Kalamazoo, Michigan, from on or about May 19, 2004, to on or about August 15, 2004, the Oklahoma City Museum of Art, Oklahoma City, Oklahoma, from on or about September 8, 2004, to on or about December 5, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619-5997, and the address is United States Department of State, SA-44, Room 700, 301 4th Street, SW., Washington, DC 20547-0001.

Dated: October 2, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02-25618 Filed 10-7-02; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF STATE

[Public Notice 4147]

Culturally Significant Objects Imported for Exhibition; Determinations: "The Medici, Michelangelo, and the Art of Late Renaissance in Florence"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "The Medici, Michelangelo, and the Art of Late Renaissance in Florence," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of some or all of the exhibit objects at The Art Institute of Chicago, Chicago, IL from on or about November 9, 2002 to on or about February 2, 2003, and The Detroit Institute of Arts, Detroit, MI from on or about March 15, 2003 to on or about June 8, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619-6529). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: October 2, 2002.

Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02-25615 Filed 10-7-02; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF STATE

[Public Notice 4148]

Culturally Significant Objects Imported for Exhibition Determinations: "The Sensuous and the Sacred: Chola Bronzes From South India"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, "The Sensuous and the Sacred: Chola Bronzes from South India," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Arthur M. Sackler Gallery, Smithsonian Institution, Washington, DC, from on or about November 10, 2002, to on or about March 9, 2003, the Dallas Museum of Art, Dallas, Texas, from on or about April 4, 2003, to on or about June 15, 2003, the Cleveland Museum of Art, Cleveland, Ohio, from on or about July 6, 2003, to on or about September 14, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619-5997, and the address is United States Department of State, SA-44, Room 700, 301 4th Street, SW., Washington, DC 20547-0001.

Dated: October 3, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02-25616 Filed 10-7-02; 8:45 am]

BILLING CODE 4710-08-P

TENNESSEE VALLEY AUTHORITY**Meeting of the Regional Resource Stewardship Council**

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of Meeting.

SUMMARY: TVA will convene a meeting of the Regional Resource Stewardship Council (Regional Council) to obtain views and advice on the topic of planning for and use of TVA reservoir lands. Under the TVA Act, TVA is charged with the proper use and conservation of natural resources for the purpose of fostering the orderly and proper physical, economic and social development of the Tennessee Valley region. The Regional Council was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The meeting agenda includes the following:

(1) Orientation to the second-term of the Regional Council.

(2) TVA reservoir lands—planning, management, and use.

(a) Panel presentations and discussion on the public land policies and practices of other public land management agencies.

(b) Briefing on TVA's reservoir land planning process and land management practices.

(c) Regional Council deliberation.

(3) Close out of business for the First Term Regional Council.

4. Public comments on the topic of TVA reservoir lands.

The Regional Council will hear opinions and views of citizens by providing a public comment session. The Public comment session will be held from 11 a.m. to Noon EST on October 24, 2002. Citizens who wish to express views and opinions on the topic of TVA reservoir lands may do so during the Public Comment portion of the agenda. Up to one hour will be allotted for the Public Comments with participation available on a first-come, first-served basis. Speakers addressing the Regional Council are requested to limit their remarks to no more than 5 minutes. Persons wishing to speak register at the door and are then called on by the Regional Council Chair during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Wednesday and Thursday, October 23 and 24, 2002, from 8:30 a.m. to 5 p.m. Eastern Standard Time each day.

ADDRESSES: The meeting will be held at the Downtown Radisson, 401 West Summit Hill Drive, Knoxville, Tennessee 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra L. Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902, (865) 632-2333.

Dated: October 1, 2002.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 02-25507 Filed 10-7-02; 8:45 am]

BILLING CODE 8120-08-M

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****Review Under 49 U.S.C. 41720 of United/US Airways Agreements**

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice ending waiting period.

SUMMARY: United Air Lines and U.S. Airways have submitted agreements to the Department for review under 49 U.S.C. 41720. That statute requires certain types of agreements between major U.S. passenger airlines to be submitted to the Department at least thirty days before the agreements' proposed effective date and allows the Department to extend the waiting period for any such agreements. The Department has completed its review of the United/US Airways agreements and has determined to end the waiting period for the agreements. The Department has concluded that the competitive issues presented by the agreements do not presently require further investigation. In reaching this conclusion, the Department is relying on the terms of the agreements, the data provided in response to our requests, and the two airlines' acceptance of restrictions imposed by the Justice Department that are intended to limit the possibility of anti-competitive conduct.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366-4731.

SUPPLEMENTARY INFORMATION: On July 25 United and U.S. Airways submitted code-share and frequent flyer program reciprocity agreements to us for review under 49 U.S.C. 41720. After informally reviewing the agreements, we find that no formal investigation of the agreements is warranted at this time, and we have determined that we should end the waiting period. The two airlines have agreed to restrictions proposed by the Justice Department that are intended to limit the possibility of anti-competitive behavior, and each airline has represented to us that it will continue to compete independently on fares and service levels. To ensure that they abide by those representations, we will monitor closely their conduct in implementing the agreements.

Under 49 U.S.C. 41720, certain kinds of joint venture agreements among major U.S. passenger airlines must be submitted to us at least thirty days before their proposed implementation date. We may extend the waiting period by 150 days with respect to a code-sharing agreement and by sixty days for the other types of agreements covered by the advance-filing requirement. At the end of the waiting period (either the thirty-day period or any extended period implemented by us), the parties may implement their agreement.

The statute does not require the parties to obtain our approval before they implement an agreement. Blocking them from implementing their agreement would normally require our issuance of an order under 49 U.S.C. 41712 (formerly section 411 of the Federal Aviation Act) in a formal enforcement proceeding that determined that the agreement's implementation would be an unfair method of competition and thus a violation of that section. Our review of all agreements submitted under 49 U.S.C. 41720 has been informal. It is analogous to the review of major mergers and acquisitions conducted by the Justice Department and the Federal Trade Commission under the Hart-Scott-Rodino Act, 15 U.S.C. 18a, since we consider whether we should institute a formal proceeding for determining whether an agreement would violate section 41712.

While our review of the United/US Airways agreements has been informal, we established an opportunity for other parties to review redacted copies of the United/US Airways agreements and to submit comments due to the public interest in the agreements. 67 FR 50745 (August 5, 2002). We have carefully considered the comments filed on the agreements as well as the agreements themselves and other information

provided to us by the parties. We have also consulted with the Justice Department, which has been reviewing the agreements under its responsibility to enforce the antitrust laws. Of course, our authority under 49 U.S.C. 41712 to prohibit unfair methods of competition is somewhat broader than the Justice Department's authority to enforce the antitrust laws. See, e.g., *United Air Lines v. CAB*, 766 F.2d 1107 (7th Cir. 1985). We extended the waiting period twice in order to conduct a comprehensive review of the agreements. 67 FR 54525 (August 22, 2002); 67 FR 59328 (September 20, 2002).

We have determined to end the waiting period for the United/US Airways agreements and take no action at this time to prevent the airlines from beginning to implement the agreements. At the present time, the material we have reviewed is not sufficient for us to conclude that an enforcement proceeding under 49 U.S.C. 41712 is warranted. However, we have a number of concerns about the United/US Airways agreements and the relationship being created by them. The two airlines together will have an industry market share of 23 percent, as measured by domestic revenue-passenger-miles ("RPMs"). In contrast, the largest airline, American, has a 17 percent market share. United has a 14 percent share, while U.S. Airways has a 9 percent share. U.S. Airways has also been the primary airline in the Northeast. We have a concern that the joint venture relationship being created by United and U.S. Airways may lead to lessening of competition between the two airlines in some markets. On the other hand, the joint venture will provide service benefits for a number of travellers and may increase competition in other markets, if United and U.S. Airways have strong incentives to compete with each other. While there is considerable overlap between the United and U.S. Airways route networks, the code-share arrangement will enable United and U.S. Airways to offer more integrated connecting services in markets not now served by either airline, which will benefit consumers traveling in those markets.

Legally and practically, the airlines' joint venture relationship will not be the equivalent of a merger, there will not be a significant integration of the airlines' operations, and each airline has represented that it will independently establish its fare levels and capacity levels in its city-pair markets. In addition, the fares paid by passengers on flights operated under the code-share

arrangement will go to the airline operating the flight, even if the passenger bought the ticket under the other airline's code (the airline operating the flight is the operating carrier, while the other airline is the marketing carrier). This should give each airline an incentive to compete with its partner by operating its own flights, since it will obtain passenger revenues only when it is the operating carrier.

After examining the United/US Airways agreements, the Justice Department has determined that it will not challenge those agreements under the antitrust laws if United and U.S. Airways accept certain restrictions on their joint venture. The two airlines have accepted those restrictions, as set forth in a letter agreement with the Justice Department. These restrictions primarily bar the airlines from code-sharing on certain nonstop routes and engaging in certain pricing conduct that could provide a vehicle for signaling and collusion. The two airlines have also agreed with the Justice Department that each airline will independently establish the terms and conditions for its frequent flyer program. The terms of the parties' agreements, with restrictions set forth in the airlines' agreement with the Justice Department, appear at this time to address our immediate concerns with competition by United and U.S. Airways. In reaching our conclusion, we are expressly relying on the airlines' representations to us and on their strict compliance with the terms of their agreement with the Department of Justice.

Under the agreement with the Justice Department, United and U.S. Airways will not code-share on local traffic on routes where both offer nonstop service, including their hub-to-hub routes (Philadelphia-Los Angeles, for example). They will not code-share on local traffic on nonstop services operated to the same endpoint from either Dulles International Airport or Reagan Washington National Airport, except for Washington, DC-LaGuardia/Boston flights. On routes served by only one of the two airlines, the marketing carrier's fares must be the same as the operating carrier's fares. On routes served by both airlines where both have comparable service (connecting service, for example), each airline's fares for flights operated by the other airline must be the same as the fares for its own flights or the fares established by the airline operating the flights. The marketing airline thus must charge either the same fares as the operating airline or the fares charged by the

marketing airline for its own flights. On routes where one airline offers nonstop service and the other airline offers connecting service, the latter airline's fares for the nonstop service must be the same as the operating carrier's fares. Finally, United and U.S. Airways must continue to act independently in establishing the terms and conditions of their frequent flyer programs and in bidding on corporate contracts, although when consistent with the antitrust laws they may offer customers the option of a joint bid.

As noted, we have considered the comments submitted on the agreements. While many of them support the United/US Airways joint venture, several of the comments argue that the joint venture will be anti-competitive and that we should institute a formal proceeding to investigate its competitive effects. At this time we are not persuaded that the joint venture or the agreements would, on their face, violate 49 U.S.C. 41712. We have not yet seen evidence that the agreements will unreasonably restrict either airline's incentives and ability to compete independently or would be likely to result in collusion on fares or service levels.

Given our strong concern that the agreements not have anti-competitive results, however, we intend to monitor closely their implementation by United and U.S. Airways. If we obtain evidence that the airlines' implementation of their joint venture is having an adverse impact on competition, we may take action under 49 U.S.C. 41712 at that time. Furthermore, if United and U.S. Airways at any future time decide that they will no longer comply with the restrictions agreed upon with the Justice Department, they will have created a new agreement which must be submitted to us under 49 U.S.C. 41720 and which therefore cannot be implemented until the end of a new waiting period. The same will be true if they materially modify the terms of the agreements submitted by them on July 25. Under our established interpretation of 49 U.S.C. 41720, airlines that significantly modify a joint venture agreement must submit the modified agreement to us under that statute.

We are continuing to examine the similar agreements submitted by Delta, Continental, and Northwest, which were filed one month after United and U.S. Airways submitted their agreements. 67 FR 56340 (September 3, 2002).

Issued in Washington, DC, on October 2, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02-25523 Filed 10-7-02; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending September 27, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST-2002-13428.

Date Filed: September 23, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC123 0205 dated 20 September 2002, Mail Vote 236—TC123 North Atlantic (except USA-Malaysia), Expedited Resolution r1-r6, Intended effective date: 1 November 2002.

Docket Number: OST-2002-13429.

Date Filed: September 23, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC123 0206 dated 20 September 2002, Mail Vote 237—TC123 Mid Atlantic Expedited Resolutions r1-r5, PTC123 0207 dated 20 September 2002, Mail Vote 238—TC123 South Atlantic Expedited Resolutions r6-r11, Intended effective date: 1 November 2002.

Docket Number: OST-2002-13432.

Date Filed: September 24, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC23 EUR-SASC 0098 dated 20 September 2002, Europe-South Asian Subcontinent Resolutions r1-r12, Minutes—PTC23 EUR-SASC 0099 dated 20 September 2002, Tables—PTC23 EUR-SASC FARES 0038 dated 20 September 2002, Intended effective date: 1 April 2003.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02-25532 Filed 10-7-02; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 12, 2002, page 40373.

DATES: Comments must be submitted on or before November 7, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267-9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Aviation Medical Examiner Program.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120-0604.

Form(s): FAA Form 8520-2.

Affected Public: A total of 450 Aviation Medical Examiner applicants.

Abstract: This collection of information is necessary in order to determine applicants' professional and personnel qualifications for certification as an Aviation Medical Examiner (AME). The information is used to develop the AME directories used by airmen who must undergo periodic examinations by AMEs.

Estimated Annual Burden Hours: An estimated 225 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information

collection; ways to enhance the quality, utility and clarity of the information to be collected, and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, in October 2, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF-100.

[FR Doc. 02-25594 Filed 10-7-02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 12, 2002, page 40373.

DATES: Comments must be submitted on or before November 7, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267-9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Procedures for non-federal Navigational Facilities, FAR 171.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120-0014.

Form(s): FAA Form 6030-1, 6030-17, 6790-4, 6790-5.

Affected Public: A total of 2413 navigation facility operators.

Abstract: The non-Federal navigation facilities are electrical/electronic aids to air navigation which are purchased, installed, operated, and maintained by an entity other than the FAA and are available for use by the flying public. These aids may be located at unattended

sites or airport terminals. The information kept is used by the FAA to prove that the facility is maintained within certain specified tolerances.

Estimated Annual Burden Hours: An estimated 33,116 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 2, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF-100.

[FR Doc. 02-25595 Filed 10-7-02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information

Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 12, 2002, page 40373.

DATES: Comments must be submitted on or before November 7, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267-9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Training and Qualification Requirements for Check Airmen and Flight Instructors.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120-0600.

Form(s): NA.

Affected Public: A total of 3,000 airmen and flight instructors.

Abstract: This rule establishes separate requirements for check airmen who check only in flight simulators and flight instructors who instruct only in flight simulators. The collection of information allows the FAA to determine the compliance to this rule of experienced pilots who would otherwise qualify as flight instructors or check airmen but who are not medically eligible to hold the requisite medical certificates.

Estimated Annual Burden Hours: An estimated 12.5 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 2, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF-100.

[FR Doc. 02-25596 Filed 10-7-02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In August 2002, there were no applications approved. Twelve approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals 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). This notice is published pursuant to paragraph (d) of § 158.29.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amendment approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
*93-01-C-05-TYS, Knoxville, TN	02/08/02	4,881,882	4,453,055	02/01/97	02/01/97
*99-01-C-01-STC, St. Cloud, MN	04/16/02	1,147,578	1,147,578	10/01/19	01/01/14
*97-04-1-01-SBP, San Luis Obispo, CA	06/25/02	6,820,830	6,820,830	07/01/15	07/01/12
00-06-U-01-SBP, San Luis Obispo, CA	06/25/02	NA	NA	07/01/15	07/01/12
99-03-C-01-MOB, Mobile, AL	07/15/02	5,694,289	4,033,023	10/01/04	07/01/04
92-01-C-01-NGM, Agana, GU	08/16/02	5,632,000	800,00	06/01/94	06/01/94
*93-02-C-02-NGM, Agana, GU	08/16/02	258,408,107	257,802,097	07/01/21	03/01/25
*99-04-C-01-PNS, Pensacola, FL	08/19/02	19,400,000	19,400,000	06/01/09	09/01/07
*93-01-1-02-SHV, Shreveport, LA	08/20/02	29,841,353	29,841,353	05/01/16	09/01/14
95-02-U-01-SHV, Shreveport, LA	08/20/02	NA	NA	05/01/16	09/01/14
*94-02-C-02-BWI, Baltimore, MD	08/28/02	60,230,930	60,230,930	04/01/09	06/01/04

AMENDMENTS TO PFC APPROVALS—Continued

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amendment approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
99-03-C-02-DRO, Durango, CO	08/29/02	730,634	1,169,258	09/01/02	01/01/04

NOTE: The amendments denoted by an asterisk (*) include a change to the PFC level charged from \$3.00 per enplaned passenger to \$4.50 per enplaned passenger. For St. Cloud, MN, this change is effective on July 1, 2002. For San Luis Obispo, CA, this change is effective on September 1, 2002. For Pensacola, FL, Agana, GU, Shreveport, LA, and Baltimore, MD, this change is effective on November 1, 2002.

Issued in Washington, DC on October 2, 2002.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 02-25593 Filed 10-7-02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 02-13469]

Grant of Applications of Five Motorcycle Manufacturers for Temporary Exemption, and Requests for Extension of Temporary Exemption, From Federal Motor Vehicle Safety Standard No. 123

This notice grants the applications by five motorcycle manufacturers for either a temporary exemption of two years from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays*, or for an extension of two years of an existing temporary exemption from such requirement. The applicants assert that “compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles,” 49 U.S.C. Sec. 30113(b)(3)(iv).

The manufacturers who have applied for a temporary exemption are CPI Motor Co. of Ta-Li City, Taiwan (CPI), for the Motorrad JT 125 (Moskito); American Suzuki Motor Corporation, Brea, California, on behalf of Suzuki Motor Corporation of Japan, for the Suzuki AN650, and Malaguti USA, Miami, Florida, on behalf of Malaguti S.p.A. of Bologna, Italy, for the Giak 150 cc and F-18 150 cc motor scooters. The manufacturers who have applied for an extension of an existing exemption are Aprilia, U.S.A. Inc., Woodstock, Ga. for the Aprilia Scarabeo 150 (NHTSA Temporary Exemption No. 99-9, expiring October 1, 2002 (see 64 FR 44264, 65 FR 1225, and 66 FR 59519)); and American Honda Motor Company, Inc., Torrance, California, for the Honda

NSS250(NHTSA Temporary Exemption No. EX 2000-2, expiring November 1, 2002, 65 FR 69130).

Because the safety issues raised by petitions for renewal of exemptions are identical to those raised in the initial petitions by these manufacturers, and because these issues are identical to those raised by the manufacturers petitioning for an exemption for the first time, we have decided to address all the petitions in a single notice. Further, given the opportunity for public comment on these issues in the years 1998-2001 (which resulted only in comments in support of the petitions), we have concluded that a further opportunity to comment on the same issues is not likely to result in any substantive submissions, and that we may proceed to decisions on these petitions. See, e.g., most recently Aprilia and Honda (66 FR 59519) and Aprilia (65 FR 1225).

The Reason Why the Applicants Need a Temporary Exemption

The problem is one that is common to the motorcycles covered by the applications. If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control, although the left handlebar is permissible for motor-driven cycles (Item 11, Table 1). Motor-driven cycles are motorcycles with motors that produce 5 brake horsepower or less. The five manufacturers petitioned to use the left handlebar as the control for the rear brakes of certain of their motorcycles whose engines produce more than 5 brake horsepower. The frame of each of these motorcycles has not been designed to mount a right foot operated brake pedal (i.e, these scooter-type vehicles which provide a platform for the feet and operate only through hand controls). Applying considerable stress to this sensitive pressure point of the frame could cause failure due to fatigue unless proper design and testing procedures are performed.

Absent an exemption, the manufacturers will be unable to sell the motorcycle models named above

because the vehicles would not fully comply with Standard No. 123.

Arguments Why the Overall Level of Safety of the Vehicles To Be Exempted Equals or Exceeds That of Non-Exempted Vehicles

As required by statute, the petitioners have argued that the overall level of safety of the motorcycles covered by their petitions equals or exceeds that of a non-exempted motor vehicle for the following reasons. All vehicles for which petitions have been submitted are equipped with an automatic transmission. As there is no foot-operated gear change, the operation and use of a motorcycle with an automatic transmission is similar to the operation and use of a bicycle, and the vehicles can be operated without requiring special training or practice.

CPI is manufacturing the Moskito 125 (JT125) under contract with Motorrad und Zweiradwerk GmbH of Germany, which has completed certification testing of the vehicle. CPI will affix a certification of compliance with the Federal motor vehicle safety standards as the manufacturer of the Moskito 125, and then ship the motorcycles directly to Motorrad of North America for sale in the United States.

According to CPI, the JT125 provides an equivalent overall level of safety to a complying vehicle because its operation is similar to that of a bicycle, and the use of a left-hand lever for the rear brake is highly intuitive and easy to use. The use of the left handlebar for the rear brake control on scooters is more natural and quicker for a scooter rider than the rider’s foot searching for the correct position on a pedal to operate the brakes. In addition, “additional benefit is provided by the reduced probability of inadvertent wheel locking in an emergency braking situation, which comes from increased sensitivity to brake feedback with the hand lever.”

American Suzuki informed us that its AN650 “can easily meet the braking performance requirements in FMVSS 122,” and enclosed a test report in support. It also compared the performance of the AN650 with the somewhat lighter GSF600S motorcycle, which is equipped with rear brakes that

are operable using a right foot control, and found the braking performance "very similar."

Malaguti submitted its models to Clark Engineering for braking performance tests, and enclosed a test report in support of its petition. It asserted that the Ciak 150 cc and F-18 150 cc meet the braking requirements of ECE 93/14 as well.

In its earlier petitions, Aprilia cited tests performed by Carter Engineering on a similar Aprilia scooter to support its statement that "a motor vehicle with a hand-operated rear wheel brake provides a greater overall level of safety than a nonexempt vehicle." See materials in Docket No. NHTSA 98-4357. According to Aprilia, a rear wheel hand brake control allows riders to brake more quickly and securely, it takes a longer time for a rider to find and place his foot over the pedal and apply force than it does for a rider to reach and squeeze the hand lever, and there is a reduced probability of inadvertent wheel locking in an emergency braking situation. Aprilia provided copies of its own test reports on a similar exempted model, the Habana, dated March 1, 2001, and May 1, 2001, which have been placed in Docket No. NHTSA-01-10257. In its latest petition, it stated that it has received no written complaints relating to the brake operation of the Scarabeo 150s which it has imported and sold under NHTSA Temporary Exemption No. 99-9.

Aprilia also pointed out that European regulations allow motorcycle manufacturers the option of choosing rear brake application through either a right foot or left handlebar control, and that Australia permits the optional locations for motorcycles of any size with automatic transmissions.

Honda informed us that "the NSS250 can easily meet the braking performance requirements of both FMVSS 122 and ECE 78," and, therefore, that "This braking system provides the NSS250 with an overall safety level exceeding * * * nonexempted vehicles." Honda will also offer the NSS250 with optional ABS for the purpose of a marketability evaluation.

In support of its petition, Honda enclosed copies of a second effectiveness service brake system test conducted in accordance with S5.3 of Standard No. 122, demonstrating that the NSS250 easily stopped within the maximum distances specified at speeds of 30 and 65 mph, as well as a test showing compliance with ECE 78.

Arguments Why an Exemption Would be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

CPI argued that its scooter is intended for low speed urban use and that it expects that these vehicles will be used mostly in congested traffic conditions. The JT125 provides a more natural braking response because of its automatic transmission and platform configuration. The vehicle provides "enhanced safety, environmentally clean and fuel efficient, safe, convenient urban transportation. The emissions of the JT125's "very small engine" have been demonstrated to be lower than large motorcycles, an alternative means of transportation.

American Suzuki argued that the level of safety of the AN650 is at least equal to that of vehicles certified to meet Standard No. 123. In its opinion, scooters like the AN650 "are of interest to the public [as] evidenced by * * * the favorable public comment on [similar] exemption requests and the number of scooters sold under the granted exemptions."

In Malaguti's opinion, its scooters provide a "much more natural braking response by the rider than non-exempted vehicles." The exemption would also be in the public interest "because Malaguti is promoting environmentally clean and efficient urban transportation."

Aprilia asserted in its initial request for exemption that "the public interest would be served with the granting of the exemption because the Scarabeo 150 provides enhanced safety as well as environmentally friendly, fuel-efficient, convenient urban transportation." According to Aprilia, its initial assertion is supported by feedback from initial customers. It has enclosed comments from Scarabeo 150 customers touting the speed and handling of the motorcycle, and a magazine article commenting that it is "the perfect vehicle for stop-and-go traffic."

An exemption would be in the public interest because the Scarabeo 150 is intended for low-speed urban use, and "it is expected that it will be used predominantly in congested traffic areas." Further, the design of the vehicle has been tested by long use around the world, and "neither consumer groups nor government authorities have raised safety concerns about this design." For this reason, Aprilia argues that an exemption would also be consistent with the objectives of motor vehicle safety.

In support of its argument that an exemption would be in the public

interest and consistent with the objectives of motor vehicle safety, Honda reiterated its certainty "that the level of safety of the NSS250 is equal to similar vehicles certified under FMVSS No. 123. * * *"

NHTSA's Decisions on the Applications and Request

It is evident that, unless Standard No. 123 is amended to permit or require the left handlebar brake control on motorscooters with more than 5 hp, the petitioners will be unable to sell their motorcycles if they do not receive a temporary exemption from the requirement that the right foot pedal operate the brake control. It is also evident from the previous grants of similar petitions by Aprilia, Honda, and others, that we have repeatedly found that the motorcycles exempted from the brake control location requirement of Standard No. 123 have an overall level of safety that equals or exceeds that of nonexempted motorcycles.

CPI argued that an exemption would be in the public interest because it would make available a low-emission, fuel efficient, convenient means of urban transportation in congested traffic conditions. Thus, it appears to us that use of the JT125 would reduce both pollution and congestion on city streets. We note its remark, too, that "neither consumer groups nor governmental authorities have raised any safety concerns as a result of this design."

American Suzuki's argument that an exemption would be in the public interest because of the comments in support of previous exemption requests for similar scooter-type vehicles is a valid one, absent any data indicating that the overall level of safety is not at least equal to that of complying vehicles.

Malaguti's arguments are similar to those of other petitioners regarding braking response and enhancing the environment and urban transportation.

Aprilia's argument that an exemption for the Habana 150 would be in the public interest because of its probable use in congested urban areas is equally applicable to the Scarabeo 150, as is its arguments that use of such vehicles worldwide has raised no vehicle safety issues related to location of brake controls. Honda reiterated its belief that overall the NSS250 is as safe as a conforming motorcycle. We note that its original request in 2000 for exemption from Standard No. 123 for this model was supported by approximately 40 commenters (See 66 FR 69130). This response to our request for comments indicates a great public interest in scooter-type vehicles and a belief of the

commenters that such vehicles have a place in the nation's overall private-vehicle transportation fleet.

In consideration of the foregoing, we hereby find that the petitioners have met their burden of persuasion that to require compliance with Standard No. 123 would prevent these manufacturers from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles. We further find that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Therefore:

1. CPI Motor Co. is hereby granted NHTSA Temporary Exemption No. EX02-1 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays*, that the rear wheel brakes be operable through the right foot control. This exemption covers only the Motorrad JT125 (Moskito) and expires on October 1, 2004.

2. Suzuki Motor Corporation is hereby granted NHTSA Temporary Exemption No. EX02-2 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays*, that the rear brakes be operable through the right foot control. This exemption applies only to the Suzuki AN650, and will expire on October 1, 2004.

3. Malaguti S.p.A. is hereby granted NHTSA Temporary Exemption No. EX02-3 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays*, that the rear wheel brakes be operable through the right foot control. This exemption covers only the Ciak 150 cc and F-18 cc, and expires on October 1, 2004.

4. NHTSA Temporary Exemption No. 99-9, exempting Aprilia USA Inc. from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays*, that the rear wheel brakes be operable through the right foot control, is hereby extended to expire on October 1, 2004. This exemption applies only to the Aprilia Scarabeo 150.

5. NHTSA Temporary Exemption No. EX2001-8, exempting American Honda Motor Co., Inc., from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays*, that the rear brakes be operable through the right foot control, is hereby extended to expire on October 1, 2004. This exemption applies only to the Honda NSS250.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on October 3, 2002.

Jeffrey W. Runge,
Administrator.

[FR Doc. 02-25522 Filed 10-7-02; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Cemeteries and Memorials will be held October 28-31, 2002, at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC. On October 28, the meeting will be held in Room 930 beginning at 9 a.m. and concluding at 3:30 p.m. On October 29 and 30, the meeting will be held in Room 630, and at several cemetery sites, beginning at 8 a.m. and concluding at 5 p.m. On October 31, the meeting will be held in Room 930 beginning at 8 a.m. and concluding at noon. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries, soldiers' lots and plots, and the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee will make recommendations to the Secretary regarding these activities.

On October 28, new appointees to the Committee will receive an orientation briefing on the VA, the National Cemetery Administration (NCA), the Federal Advisory Committee Act (FACA), and their roles and responsibilities as Committee members. On October 29, the Committee will receive updates on NCA's "National Shrine Commitment" as it relates to historic preservation issues. The Committee will travel to Baltimore and Loudon Park National Cemeteries to view monuments and structures at those two historic cemeteries. On October 30, the Committee will be briefed on new cemetery construction, the State Cemetery Grants Program, legislative initiatives, and other issues related to the administration and maintenance of national cemeteries. The Committee will also visit Arlington National Cemetery. On October 31, the Committee will conclude with discussions of any unfinished business, make program recommendations, and future meeting sites and agenda topics.

Any member of the public wishing to attend the meeting is requested to contact Ms. Paige Lowther, Designated Federal Officer, at (202) 273-5164. The Committee will accept written comments. Comments can be transmitted electronically to the Committee at paige.lowther@mail.va.gov or mailed to National Cemetery Administration (40), 810 Vermont Avenue, NW., Washington, DC 20420. In the letter, the writers must identify themselves and state the organizations, associations or person(s) they represent.

Dated: September 27, 2002.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02-25497 Filed 10-7-02; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

President Task Force To Improve Health Care Delivery for Our Nation's Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 that a meeting of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is scheduled for Wednesday, October 9, 2002, beginning at 9 a.m. and adjourning at 5 p.m. The meeting will be held in the Jefferson Ballroom of the Radisson Hotel Old Town, 901 North Fairfax Street, Alexandria, VA and is open to the general public.

The purpose of the President's Task Force to Improve Health Care for Our Nation's Veterans is to:

(a) Identify ways to improve benefits and services for Department of Veterans Affairs (VA) beneficiaries and Department of Defense (DoD) military retirees who are also eligible for benefits from VA, through better coordination of the activities of the two departments;

(b) Identify opportunities to remove barriers that impede VA and DoD coordination, including budgeting processes, timely billing, cost accounting, information technology, and reimbursement; and

(c) Identify opportunities through partnership between VA and DoD, to maximize the use of resources and infrastructure, including buildings, information technology and data sharing systems, procurement of supplies, equipment and services.

The morning and afternoon sessions will be a discussion of format and issues for the Final Report to the President.

Interested persons can provide written comments to Mr. Dan Amon, Communications Director, President's

Task Force to Improve Health Care Delivery for Our Nation's Veterans, 1401 Wilson Boulevard, 4th Floor, Arlington, Virginia 22209.

Dated: October 1, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02-25495 Filed 10-7-02; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation (VACOR); Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Veterans' Advisory Committee on Rehabilitation will be held on November 13-14, 2002, from 9 a.m. until 4:30 p.m. on both days at the Department of Veterans Affairs, 810

Vermont Avenue, NW., Washington, DC. On November 13, the meeting will be held in Room 730 and on November 14, the meeting will be held in Room 930. Both meeting sessions will be open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on the rehabilitation needs of disabled veterans and the administration of VA's rehabilitation programs.

On the morning of November 13th, the meeting will begin with presentation of Certificates of Appointments to newly appointed Committee members. Then, the Committee will receive an update regarding the current status of the Vocational Rehabilitation and Employment program. In the afternoon, the Committee will receive a briefing regarding Traumatic Brain Injury services available through the VA Physical Medicine and Rehabilitation program.

On the morning of November 14th, General Counsel will provide the Committee with a briefing on the Ethics

Guidelines for Special Government Employees. Then, the Committee will receive a briefing regarding the Compensated Work Therapy, Incentive Therapy and Transitional Residence programs. In the afternoon, the Committee will receive a briefing concerning Blind Rehabilitation Services available through the Veterans Health Administration. The meeting will conclude with a discussion of future meeting dates, agenda items and recommendations.

Any member of the public wishing to attend the meeting should contact Ms. Alison O. Rosen, Department of Veterans Affairs, Veterans Benefits Administration (28), 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 273-7208.

Dated: September 27, 2002.

By direction of the Secretary:

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02-25496 Filed 10-07-02; 8:45 am]

BILLING CODE 8320-01-M



Federal Register

**Tuesday,
October 8, 2002**

Part II

Department of the Treasury

Bureau of Alcohol, Tobacco, and Firearms

**27 CFR Parts 4, 5, 7, and 13
Organic Claims in Labeling and
Advertising of Alcohol Beverages (2002R-
288P); Final Rule and Proposed Rule**

DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms****27 CFR Parts 4, 5, 7, and 13**

[T.D. ATF-483]

RIN 1512-AC87

Organic Claims in Labeling and Advertising of Alcohol Beverages (2002R-288P)**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.**ACTION:** Treasury decision; temporary rule.

SUMMARY: ATF amends the alcohol labeling and advertising rules to cross-reference the United States Department of Agriculture's (USDA) National Organic Program (NOP) rules. Any alcohol beverage labeled or advertised with an organic claim must comply with both NOP rules administered by USDA and the applicable rules administered by ATF. Elsewhere in this separate part, ATF invites comments on this temporary rule. We will accept comments during the 60-day period following publication of the rule.

EFFECTIVE DATE: The effective date is October 21, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Evancheck, Bureau of Alcohol, Tobacco and Firearms, Alcohol Labeling and Formulation Division, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202-927-8140; e-mail RJEvancheck@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:**Background***ATF's Authority To Regulate Labeling and Advertising*

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information about a product's identity and prohibits the use of deceptive information on such labels. At 27 U.S.C. 205(f), the FAA Act prohibits deceptive advertising. The FAA Act also authorizes ATF to issue regulations to carry out the Act's provisions. Regulations in 27 CFR parts 4, 5, and 7 set forth the rules for labeling and advertising of wine, distilled spirits, and malt beverages, respectively. Regulations in 27 CFR part 13 set forth rules for approval, denial, and revocation of labels and for appeals of our decisions on such issues.

Organic Foods Production Act of 1990

Under the Organic Foods Production Act of 1990 (OFPA), 7 U.S.C. 6501 *et seq.*, the USDA has authority over agricultural products sold, labeled, or represented (including those advertised) with organic claims. The OFPA applies to alcohol beverages, so producers and importers of wine, spirits, and malt beverages who comply with its rules may make organic claims about their products. The USDA office responsible for administering the OFPA is the Agricultural Marketing Service (AMS). On December 21, 2000, AMS published its final rule establishing the NOP. The final rule, beginning at 65 FR 80548, amended USDA regulations in title 7, Code of Federal Regulations, by adding a new part 205—National Organic Program.

AMS regulations apply to all domestic and imported products that make organic claims. However, in drafting their rules, the AMS used terms specific to non-alcohol food labels, such as "principal display panel," "information panel," and "ingredient list" to refer to positions on the label. On the NOP Web site (<http://www.ams.usda.gov/nop>), AMS provides guidance for placement of required and optional information related to organic claims on other types of packaging, such as alcohol beverage labels.

The OFPA and implementing regulations provide civil and criminal penalties for improper use of organic claims. AMS has sole authority to administer and enforce the NOP rules. Those rules became effective on February 20, 2001, and all labels and representations, including advertisements, that make organic claims must comply with the rules by October 21, 2002.

Prior ATF Policy on Organic Claims on Alcohol Beverages

Before the NOP regulations were published, we allowed importers and producers to claim their alcohol beverage products were made from organically grown raw materials if the applicant for label approval provided documentation of organic certification by a recognized certifying agency or State or foreign government. We enunciated our organic claims policy in our publication, Compliance Matters 95-2 (http://www.atf.treas.gov/pub/alctob_pub/comp952.htm).

After publication of the NOP regulations, we announced a new policy on organic claims in our Alcohol & Tobacco Newsletter of March 2001 (http://www.atf.treas.gov/pub/alctob_pub/mar2001newsltr02.htm). We

stated that our approval of labels with organic claims did not indicate compliance with the NOP.

Based upon the NOP-required compliance date of October 21, 2002, approval of any label that makes organic claims but does not comply with such rules will be revoked by operation of regulations as of October 21, 2002.

ATF Policy on Organic Claims on Alcohol Beverages Under the NOP

We have entered into a Memorandum of Understanding with AMS on a number of questions related to the agencies' responsibilities with respect to alcohol beverage labels and advertising that contain organic claims. ATF will refer any Certificate of Label Approval (COLA) or Certificate of Exemption from Label Approval application that makes an organic claim to AMS for a determination as to whether the label complies with NOP rules. If AMS advises us that the label complies with its rules, we will complete our customary review of the COLA or Exemption application and take appropriate action. If AMS advises us that the label does not comply with its rules, we will return the COLA or Exemption application to the applicant for correction, since the label would mislead consumers.

When ATF approves a label, we presume the contents of the bottle that uses the label will be as described on the label. If the contents do not conform to the description on the label, the product is mislabeled in violation of the FAA Act and must not be sold in interstate commerce under ATF-administered rules. This has always been true for any label claim, and we want to confirm this policy as it applies to organic claims on labels. For example, if we approve a label for a beer made from organically grown barley and the grower of the barley loses its organic certification, the brewer must not use the approved label on beer made from barley that was grown after the grower lost its certification. We will take action on such violations under the FAA Act and will refer the labels and pertinent information to AMS. Aside from whether a label or advertisement conforms with the NOP, ATF will continue to review labels under existing regulations to ensure that organic claims, as presented, are not likely to mislead or deceive consumers as to the identity of the products.

Products Without COLAs or Certificates of Exemption From Label Approval

There are certain situations when ATF does not issue a COLA or a Certificate of Exemption from Label

Approval. Examples are malt beverages that are bottled in or shipped into a State that does not have similar State law to the FAA Act and wines that contain less than 7 percent alcohol by volume, since such wines are not covered under the FAA Act. In these cases, the NOP rules continue to apply.

Advertising

ATF also has jurisdiction over advertising of alcohol beverages, but does not require pre-approval of advertising. If we discover any misleading use of organic claims in alcohol beverage advertising, we will treat these violations the same as any other violations involving misleading information in advertising. We will also refer our findings to the NOP for its further action.

Regulatory Changes

ATF amends its regulations in parts 4, 5, 7, and 13 to recognize the NOP's authority to regulate any organic claims on labels of alcohol beverages. We add 7 CFR 205 to the list of related regulations in each part. We add a new section to parts 4, 5, and 7 to confirm that we will allow organic claims in labeling and advertising of alcohol beverages as long as they conform to the requirements of the NOP.

In part 13, we add a section to reflect our reliance on AMS for determinations concerning organic claims on labels and to direct persons who wish to appeal any AMS determinations that affect labels to the proper office of AMS. We also amend § 13.51 to clarify that labels may be revoked by operation of laws and regulations other than the FAA Act and its implementing regulations. This has been ATF's policy, and the amendment to the regulation is a clarification rather than a change. Finally, we amend § 13.61 to note that we will disclose applications for approval of labels that make organic claims to the appropriate office of the USDA.

Each prohibited practices section of parts 4, 5, and 7 includes a prohibition on referring to standards or tests in a way that is misleading (§§ 4.39(a)(4), 5.42(a)(4), and 7.29(a)(4)). There is also a prohibition on the use of seals (§§ 4.39(g), 5.42(b)(7), and 7.29(d)), if they are misleading to consumers. Curative and therapeutic claims are prohibited under §§ 4.39(h), 5.42(b)(8), and 7.29(e). In its consumer information brochure on the organic rule (<http://www.ams.usda.gov/nop/consumerbrochure.htm>), the USDA stated, "USDA makes no claims that organically produced food is safer or more nutritious than conventionally

produced food. Organic food differs from conventionally produced food in the way it is grown, handled, and processed." Therefore, we do not consider organic claims to be curative or therapeutic. Since properly used organic claims, including certifying agent names and seals and the USDA organic seal, are not misleading to the consumer, we did not make any changes to the prohibited practices sections of the regulations.

No Change to Internal Revenue Code (IRC) Rules

The IRC only gives ATF authority to require labels that show compliance with the alcohol tax and qualification rules in chapter 51 of the Code. In parts 19, 24, and 25, we interpret this to mean the label must show the tax class, quantity, and responsible bottler. Because organic claims do not affect the tax classification or status of the product, we will not change the IRC regulations. Organic claims relating to alcohol beverage products that are exempt from FAA Act requirements will be entirely under the jurisdiction of the NOP.

Transition to New Rules

Any approved labels that make organic claims but do not comply with the NOP rules are revoked by operation of law and regulations, effective October 21, 2002. For products that were made from ingredients grown before October 21, 2002, bottlers and importers may submit labels to ATF for approval only until supplies of such products are exhausted. The NOP policy is articulated at <http://www.ams.usda.gov/nop/Commercestream091202.pdf>.

Regulatory Analyses and Notices

Administrative Procedure Act

Because this document merely cross-references the NOP rules as they relate to alcohol beverage labeling and because the compliance date for those rules is October 21, 2002, we find it to be impracticable to issue this Treasury Decision with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation in § 553(d).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this temporary rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and its implementing regulations, 5 CFR

part 1320, do not apply to this final rule because no new requirement for collection(s) of information is contained in these regulations.

Executive Order 12866

We have determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information

Marjorie D. Ruhf of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms, drafted this document. However, other employees of ATF, the Treasury Department, and the Department of Agriculture's Agricultural Marketing Service participated in developing the document.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Advertising, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Beer, Customs duties and inspection, Imports, Labeling, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 13

Administrative practice and procedure, Alcohol and alcoholic beverages, Labeling.

Authority and Issuance

Title 27, Code of Federal Regulations, is amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

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

Authority: 27 U.S.C. 205, unless otherwise noted.

2. The undesignated cross-references preceding the center heading for subpart A are removed and a new § 4.5 is added to subpart A, to read as follows:

§ 4.5 Related regulations.

The following regulations also relate to this part:

27 CFR Part 205—National Organic Program

27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits
 27 CFR Part 5—Labeling and Advertising of Distilled Spirits
 27 CFR Part 7—Labeling and Advertising of Malt Beverages
 27 CFR Part 9—American Viticultural Areas
 27 CFR Part 12—Foreign Nongeneric Names of Geographic Significance Used in the Designation of Wines
 27 CFR Part 13—Labeling Proceedings
 27 CFR Part 16—Alcoholic Beverage Health Warning Statement
 27 CFR Part 24—Wine
 27 CFR Part 26—Liquors and Articles From Puerto Rico and the Virgin Islands
 27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer
 27 CFR Part 71—Rules of Practice in Permit Proceedings
 27 CFR Part 252—Exportation of Liquors

3. A new subpart K is added to part 4 to read as follows:

Subpart K—Use of the Term “Organic”

§ 4.101 Use of the term “organic.”

(a) Use of the term “organic” is optional and is treated as “additional information on labels” under § 4.38(f).

(b) Any use of the term “organic” on a wine label or in advertising of wine must comply with the United States Department of Agriculture’s (USDA) National Organic Program rules (7 CFR part 205) as interpreted by the USDA.

(c) This section applies to labels and advertising that use the term “organic” on and after October 21, 2002.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

4. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

5. Section 5.2 is revised to read as follows:

§ 5.2 Related regulations.

The following regulations also relate to this part:

7 CFR Part 205—National Organic Program
 27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits
 27 CFR Part 4—Labeling and Advertising of Wine
 27 CFR Part 7—Labeling and Advertising of Malt Beverages
 27 CFR Part 13—Labeling Proceedings
 27 CFR Part 16—Alcoholic Beverage Health Warning Statement
 27 CFR Part 19—Distilled Spirits Plants
 27 CFR Part 26—Liquors and Articles From Puerto Rico and the Virgin Islands

27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer
 27 CFR Part 71—Rules of Practice in Permit Proceedings
 27 CFR Part 252—Exportation of Liquors

6. A new subpart I is added to part 5 to read as follows:

Subpart I—Use of the Term “Organic”

§ 5.71 Use of the term “organic.”

(a) Use of the term “organic” is optional and is treated as “additional information on labels” under § 5.33(f).

(b) Any use of the term “organic” on a distilled spirits label or in advertising of distilled spirits must comply with the United States Department of Agriculture’s (USDA) National Organic Program rules, 7 CFR part 205, as interpreted by the USDA.

(c) This section applies to labels and advertising that use the term “organic” on and after October 21, 2002.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

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

Authority: 27 U.S.C. 205.

8. Section 7.4 is revised to read as follows:

§ 7.4 Related regulations.

The following regulations also relate to this part:

27 CFR Part 205—National Organic Program
 27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits
 27 CFR Part 4—Labeling and Advertising of Wine
 27 CFR Part 5—Labeling and Advertising of Distilled Spirits
 27 CFR Part 13—Labeling Proceedings
 27 CFR Part 16—Alcoholic Beverage Health Warning Statement
 27 CFR Part 25—Beer
 27 CFR Part 26—Liquors and Articles from Puerto Rico and the Virgin Islands
 27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer
 27 CFR Part 71—Rules of Practice in Permit Proceedings

9. A new subpart I is added to part 7 to read as follows:

Subpart I—Use of the Term “Organic”

§ 7.81 Use of the term “organic.”

(a) Use of the term “organic” is optional and is treated as “additional information on labels” under § 7.28(e).

(b) Any use of the term “organic” on a malt beverage label or in advertising of malt beverages must comply with the United States Department of

Agriculture’s (USDA) National Organic Program rules (7 CFR part 205) as interpreted by the USDA.

(c) This section applies to labels and advertising that use the term “organic” on and after October 21, 2002.

PART 13—LABELING PROCEEDINGS

10. The authority citation for part 13 continues to read as follows:

Authority: 27 U.S.C. 205(e) and 26 U.S.C. 5301 and 7805.

11. Section 13.1 is amended by adding two sentences to the end of the section, to read as follows:

§ 13.1 Scope of part.

* * * The appeal process in this part does not apply to organic claims on alcohol beverage labels. See § 13.101.

12. A new § 13.3 is added to subpart A to read as follows:

§ 13.3 Related regulations.

The following regulations also relate to this part:

7 CFR Part 205—National Organic Program
 27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits
 27 CFR Part 4—Labeling and Advertising of Wine
 27 CFR Part 5—Labeling and Advertising of Distilled Spirits
 27 CFR Part 7—Labeling and Advertising of Malt Beverages
 27 CFR Part 9—American Viticultural Areas
 27 CFR Part 12—Foreign Nongeneric Names of Geographic Significance Used in the Designation of Wines
 27 CFR Part 16—Alcoholic Beverage Health Warning Statement
 27 CFR Part 19—Distilled Spirits Plants
 27 CFR Part 24—Wine
 27 CFR Part 25—Beer
 27 CFR Part 26—Liquors and Articles from Puerto Rico and the Virgin Islands
 27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer
 27 CFR Part 71—Rules of Practice in Permit Proceedings
 27 CFR Part 252—Exportation of Liquors

13. Section 13.51 is amended by revising the first sentence to read as follows:

§ 13.51 Revocation by operation of law or regulation.

ATF will not individually notify all holders of certificates of label approval, certificates of exemption from label approval, or distinctive liquor bottle approvals that their approvals have been revoked if the revocation occurs by operation of either ATF-administered law or regulation or applicable law or regulation of other agencies. * * *

14. Section 13.61 is amended by redesignating the text of paragraph (a) as paragraph (a)(1); adding a paragraph heading to newly designated paragraph (a)(1); and adding paragraph (a)(2) to read as follows:

§ 13.61 Publicity of information.

(a) *Pending and denied applications.*

(1) *General.* * * *

(2) *Labels that make organic claims.*

ATF will disclose applications for approval of labels that make organic claims to the appropriate office of the United States Department of Agriculture

to assure such labels comply with National Organic Program rules.

* * * * *

15. A new subpart G is added to part 13 to read as follows:

Subpart G—Appeals Concerning Other Agencies’ Rules

§ 13.101 Appeals concerning use of the term “organic.”

To appeal a determination that an organic claim on a label does not comply with the National Organic Program rules in 7 CFR part 205, contact

the Program Manager, National Organic Program (NOP), Agricultural Marketing Service, United States Department of Agriculture. See the NOP appeal process in 7 CFR 205.680.

Signed: August 19, 2002.

Bradley A. Buckles,
Director.

Approved: September 6, 2002.

Timothy E. Skud,
Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).
[FR Doc. 02-25265 Filed 10-7-02; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms****27 CFR Parts 4, 5, 7, and 13**

[Notice No. 954; Re: T.D. ATF-483]

RIN 1512-AC87

Organic Claims in Labeling and Advertising of Alcohol Beverages (2002R-288P)**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.**ACTION:** Notice of proposed rulemaking; request for comments.

SUMMARY: ATF is proposing to finalize temporary regulations published elsewhere in this separate part that amend the alcohol labeling and advertising rules to cross-reference the United States Department of Agriculture's (USDA) National Organic Program (NOP) rules. Any alcohol beverage labeled or advertised with an organic claim must comply with both NOP rules administered by the USDA and the applicable rules administered by ATF. In this notice of proposed rulemaking, we invite comments on the temporary rule.

DATES: Written comments must be received by December 9, 2002.**ADDRESSES:** You may send comments to any of the following addresses—

- Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, PO Box 50221, Washington, DC 20091-0221 (Attn: Notice No. 954);

- 202-927-8525 (Facsimile);

- nprm@atfhq.atf.treas.gov (E-mail);

- <http://www.atf.treas.gov> (Online—A comment form is available with this copy of the notice).

See the "Public Participation" section of this notice for specific requirements, as well as information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT:

Richard Evanchec, Alcohol Labeling and Formulation Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202-927-8140; e-mail RJEvanchec@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION: Please see the T.D. ATF-483 published in the "Rules and Regulations" section of today's issue of the **Federal Register** for a discussion of our temporary and proposed changes to parts 4, 5, 7, and 13.

Public Participation

We request comments from anyone interested. We specifically request comments on the clarity of the temporary rule and how we could make it easier to understand. We will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if we can.

You may view comments by appointment at the ATF Reading Room, Public and Governmental Affairs, room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. You may also obtain copies at 20 cents per page. If you want to view or request copies of comments, telephone the ATF Librarian at 202-927-7890.

For your convenience, we will post comments received in response to this notice on the ATF Web site. All comments posted on our Web site will show the name of the commenter but not street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the ATF Reading Room. To access online copies of the comments on this temporary rule, visit <http://www.atf.treas.gov/> and select "Regulations," then "Notices of proposed rulemaking (Alcohol)." Next, select "View Comments" under this notice number. Finally, select "Notice of Proposed Rulemakings Comments" and this notice number.

We do not recognize any submitted material as confidential. We will disclose all information on comments and commenters. Do not enclose in your comments any material you consider confidential or inappropriate for disclosure.

You may submit comments in any of five ways.

- **By Mail:** Send written comments to ATF at the address listed in the **ADDRESSES** section.

- **By Facsimile:** Submit comments by facsimile transmission to 202-927-8525. We will not acknowledge receipt. Comments transmitted as facsimiles will be treated as originals, and they must—

- (1) Be legible;

- (2) Reference this Notice number;

- (3) Be on 8.5-by 11-inch paper;

- (4) Contain a legible, written signature; and

- (5) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- **By e-mail:** Send comments to nprm@atfhq.atf.treas.gov. We will not acknowledge receipt of e-mail. We will

treat e-mailed comments as originals. Comments transmitted as electronic-mail must—

- (1) Contain your name, mailing address, and e-mail address; and

- (2) Reference this Notice number on the subject line.

- **Online:** See the ATF Internet Web site at <http://www.atf.treas.gov>. We provide a comment form with the online copy of this notice.

In Person: Write to the Director to ask for a public hearing. The Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Regulatory Analyses and Notices*Administrative Procedure Act*

We issued the associated temporary rule without prior notice or public procedure under 5 U.S.C. 553(b) and without it being subject to the effective date limitation in section 553(d) for two reasons. First, the temporary rule merely cross-references and incorporates the NOP rules as they relate to alcohol beverage labeling. The mandatory compliance date for the NOP rules is October 21, 2002. Second, we are not imposing new requirements. By this notice, we are allowing interested persons an opportunity to comment.

Regulatory Flexibility Act

A regulatory flexibility analysis is not required. Implementation of this proposed rule would not significantly impact a substantial number of small entities.

We do not endorse products when we approve labels that make organic claims. These regulations merely allow bottlers to more accurately describe their products to consumers and help consumers identify the alcohol beverages they purchase. Thus, any benefit derived from the use of an organic claim results from a proprietors' own efforts and from consumer acceptance of products that comply with the rules of the NOP.

Paperwork Reduction Act

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

Executive Order 12866

We have determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information

Marjorie Ruhf of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms, drafted this document. Employees of the Treasury Department and USDA, as well as other ATF

employees, participated in its development.

Signed: August 19, 2002.

Bradley A. Buckles,
Director.

Approved: September 6, 2002.

Timothy E. Skud,
Deputy Assistant Secretary, (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 02-25264 Filed 10-7-02; 8:45 am]

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