



Federal Register

3-28-03

Vol. 68 No. 60

Pages 15043-15334

Friday

Mar. 28, 2003



The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the **Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at <http://www.access.gpo.gov/nara>. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512-1262; or call (202) 512-1530 or 1-888-293-6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday-Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is \$699, or \$764 for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is \$10.00 for each issue, or \$10.00 for each group of pages as actually bound; or \$2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche 202-512-1800
Assistance with public subscriptions 202-512-1806

General online information 202-512-1530; 1-888-293-6498

Single copies/back copies:

Paper or fiche 202-512-1800
Assistance with public single copies 1-866-512-1800
(Toll-Free)

FEDERAL AGENCIES

Subscriptions:

Paper or fiche 202-741-6005
Assistance with Federal agency subscriptions 202-741-6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to <http://listserv.access.gpo.gov> and select:

Online mailing list archives

FEDREGTOC-L

Join or leave the list

Then follow the instructions.



Contents

Federal Register

Vol. 68, No. 60

Friday, March 28, 2003

Agriculture Department

See Animal and Plant Health Inspection Service

See Food and Nutrition Service

See Forest Service

See Rural Housing Service

See Rural Utilities Service

Alcohol and Tobacco Tax and Trade Bureau

PROPOSED RULES

Alcoholic beverages:

Flavored malt beverages

Correction, 15119

Animal and Plant Health Inspection Service

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 15146

Army Department

See Engineers Corps

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 15156

Patent licenses; non-exclusive, exclusive, or partially exclusive:

Infectious JEV cDNA clones that produce highly attenuated recombinant JEV, and vaccines, 15156–15157

Blind or Severely Disabled, Committee for Purchase From People Who Are

See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 15190–15191

Grant and cooperative agreement awards:

World Health Organization, 15191

Grants and cooperative agreements; availability, etc.:

Communication and Negotiation About Barrier Contraceptive Use Among Young Adults At Risk, 15191–15196

Centers for Medicare & Medicaid Services

RULES

Medicare:

Ambulatory surgical centers; ratesetting methodology, payment rates and policies, and covered surgical procedures list, 15267–15312

PROPOSED RULES

Medicare:

Prosthetics and Certain Custom-Fabricated Orthotics; Special Payment Provisions and Requirements; Negotiated Rulemaking Committee; meetings, 15139–15140

NOTICES

Medicare and medicaid:

Program issuances; quarterly listing, 15196–15206

Meetings:

Medicare—

Inpatient rehabilitation facility prospective payment system; town hall meeting, 15206–15207

New durable medical equipment coding and payment determinations, 15207–15209

Civil Rights Commission

NOTICES

Meetings; State advisory committees:

Rhode Island, 15151

Coast Guard

RULES

Drawbridge operations:

Florida, 15051

Ports and waterways safety:

Chesapeake Bay, Calvert County, MD; Calvert Cliffs

Nuclear Power Plant; security zone, 15051–15053

Willamette River, Portland, OR; safety zones, 15053–15055

Regattas and marine parades:

U.S. Naval Academy Crew Races, 15050–15051

Commerce Department

See Industry and Security Bureau

See International Trade Administration

See National Oceanic and Atmospheric Administration

See National Telecommunications and Information Administration

See Patent and Trademark Office

Committee for Purchase From People Who Are Blind or Severely Disabled

NOTICES

Procurement list; additions and deletions, 15150–15151

Committee for the Implementation of Textile Agreements

NOTICES

African Growth and Opportunity Act; determinations:

Light- and medium-weight dyed warp pile cotton velvet for use in apparel articles; commercial availability; comment request, 15154–15155

Defense Department

See Army Department

See Engineers Corps

NOTICES

Federal Acquisition Regulation (FAR):

Agency information collection activities; proposals, submissions, and approvals, 15155–15156

Drug Enforcement Administration

NOTICES

Applications, hearings, determinations, etc.:

Genesis 1:29 Corp., 15225–15226

Guerra, Lazaro, M.D., 15226–15227

Leslie, Robert A., M.D., 15227–15231

Education Department**NOTICES**

Meetings:

Institutional Quality and Integrity National Advisory Committee, 15159–15161

Employment and Training Administration**NOTICES**

Federal-State unemployment compensation program:

Workforce Security Programs; unemployment insurance program letters—
Federal unemployment insurance law; interpretation, 15241–15243

Employment Standards Administration**NOTICES**

Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 15243–15244

Energy Department

See Energy Efficiency and Renewable Energy Office

See Federal Energy Regulatory Commission

NOTICES

Grants and cooperative agreements; availability, etc.:
Renewable energy and energy efficiency on tribal lands; strategic and energy resource planning, capacity building, and organizational development, 15161

Energy Efficiency and Renewable Energy Office**NOTICES**

Reports and guidance documents; availability, etc.:
Alternative fuel vehicle acquisition, 15161–15162

Engineers Corps**NOTICES**

Base realignment and closure:

Surplus Federal property—
Honey Lake, Sierra Army Depot, Herlong, CA, 15157

Environmental statements; notice of intent:

Hendry County, FL; Caloosahatchee River Aquifer Storage and Recovery Project, 15157–15158

Hendry, Glades, Charlotte, or Lee Counties, FL; C-43 Basin Storage Reservoir Project, 15158

Palm Beach County, FL—

Palm Beach Harbor Lake Worth Access Channel Expansion, Section 107 Small Navigation Project; correction, 15159

Environmental Protection Agency**RULES**

Air quality implementation plans; approval and promulgation; various States:

Pennsylvania, 15059–15061

Toxic substances:

Significant new uses—
Alkoxyated alkylpolyol acrylates, etc., 15061–15089

PROPOSED RULES

Air quality implementation plans; approval and promulgation; various States:

Pennsylvania, 15138–15139

NOTICES

Environmental statements; availability, etc.:

Agency statements—
Comment availability, 15166–15167
Weekly receipts, 15165

Grants and cooperative agreements; availability, etc.:

Environmental Compliance Program, 15167–15170

Reports and guidance documents; availability, etc.:

Onsite and Clustered (Decentralized) Wastewater Treatment Systems—

Management Guidelines, 15172–15173

Management Handbook, 15170–15172

Superfund; response and remedial actions, proposed settlements, etc.:

Sealand Restoration Site, NY, 15173

Shenandoah Road Groundwater Contamination Site, NY, 15173–15174

Executive Office of the President

See Presidential Documents

Farm Credit Administration**RULES**

Farm credit system:

Funding and fiscal affairs, loan policies and operations, and funding operations—

Asset-backed and mortgage-backed securities

investments; capital adequacy, 15045–15047

Federal Aviation Administration**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 15259–15260

Meetings:

RTCA, Inc., 15260

Passenger facility charges; applications, etc.:

Palm Beach County, FL, et al., 15260–15263

Federal Communications Commission**RULES**

Practice and procedure:

Truthful statements, 15096–15098

Radio stations; table of assignments:

Georgia, 15099–15100

Louisiana, 15099

Texas, 15099

Wisconsin, 15100

PROPOSED RULES

Radio stations; table of assignments:

California, 15142–15143

Oklahoma and Texas, 15143–15144

Texas, 15140–15142

Various States, 15140–15141

NOTICES

Common carrier services:

Wireless telecommunications services—

Narrowband PCS spectrum auction; notice and filing requirements, etc., 15174–15188

Meetings:

Technological Advisory Council, 15188

Privacy Act:

Systems of records, 15188–15190

Federal Energy Regulatory Commission**NOTICES**

Electric rate and corporate regulation filings:

New England Power Pool et al., 15162–15163

Environmental statements; availability, etc.:

FPL Energy Maine Hydro, LLC, 15163

Hydroelectric applications, 15163–15165

Federal Reserve System**NOTICES**

Banks and bank holding companies:

Change in bank control, 15190

Formations, acquisitions, and mergers, 15190

Financial Management Service

See Fiscal Service

Fiscal Service

NOTICES

Surety companies acceptable on Federal bonds:
Navigators Insurance Co., 15264

Fish and Wildlife Service

RULES

Endangered Species Act:
Evaluation of conservation efforts when making listing decisions; policy, 15100–15115

NOTICES

Comprehensive conservation plans; availability, etc.:
Alamosa and Monte Vista National Wildlife Refuge Complex, CO, 15221–15224
Environmental statements; availability, etc.:
Double-crested cormorant management, 15224–15225

Food and Drug Administration

PROPOSED RULES

Food for human consumption:
Current good manufacturing practice—
Dietary supplements and dietary supplement ingredients; meetings, 15117–15118

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 15209

Food and Nutrition Service

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 15146

Forest Service

NOTICES

Environmental statements; notice of intent:
Sequoia National Forest, CA, 15147–15148
Meetings:
Resource Advisory Committees—
Mineral County, 15148

General Services Administration

RULES

Federal Management Regulation:
Internet GOV Domain, 15089–15092

NOTICES

Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 15155–15156

Health and Human Services Department

See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

RULES

Federal claims collection:
Administrative wage garnishment, 15092–15096

Homeland Security Department

See Coast Guard

Housing and Urban Development Department

NOTICES

Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 15216–15217
Privacy Act:
Systems of records, 15217–15220

Industry and Security Bureau

NOTICES

Export transactions:
List of unverified persons in foreign countries, guidance to exporters as to “red flags” (Supplement No. 3 to 15 CFR 732); revisions, 15151–15152

Interior Department

See Fish and Wildlife Service

NOTICES

Reports and guidance documents; availability, etc.:
Klamath River Basin; Federal agency work plans and reports, 15220–15221

Internal Revenue Service

PROPOSED RULES

Employment taxes and collection of income taxes at source:
Payment card transactions; information reporting and backup withholding; cross-reference to Taxpayer Identification Number Matching Program rule
Correction, 15119

Income taxes:

Partnership; noncompensatory options
Correction, 15118–15119

NOTICES

Meetings:
Taxpayer Advocacy Panels, 15264–15265

International Trade Administration

NOTICES

Antidumping:
Preserved mushrooms from—
China, 15152–15153

Justice Department

See Drug Enforcement Administration

Labor Department

See Employment and Training Administration
See Employment Standards Administration
See Mine Safety and Health Administration

NOTICES

Grants and cooperative agreements; availability, etc.:
Morocco, Uganda, Dominican Republic, and Philippines; combating child labor through education, 15231–15241

Mine Safety and Health Administration

NOTICES

Safety standard petitions:
Snyder Coal Co. et al., 15244–15246

National Aeronautics and Space Administration

NOTICES

Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 15155–15156

National Institutes of Health**NOTICES**

Environmental statements; notice of intent:
Fort Detrick, Frederick, MD; Integrated Research Facility,
15210

Meetings:

Director's Council of Public Representatives, 15210–
15211

National Center for Research Resources, 15211

National Institute of Allergy and Infectious Diseases,
15212

National Institute of Mental Health, 15211–15212

National Institute of Nursing Research, 15212

Scientific Review Center, 15212–15215

National Oceanic and Atmospheric Administration**RULES**

Endangered Species Act:

Evaluation of conservation efforts when making listing
decisions; policy, 15100–15115

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—
Pollock, 15115–15116

PROPOSED RULES

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—
Rock sole and yellowfin sole, 15144–15145

NOTICES

Coastal zone management programs and estuarine
sancturaries:

Consistency appeals—

Islander East Pipeline Co.; correction, 15266

Endangered and threatened species:

Anadromous fish take—

Marion County, OR; Routine Road Maintenance

Program submission; salmon and steelhead, 15153–
15154

National Science Foundation**NOTICES**

Meetings:

Biological Sciences Advisory Committee, 15246

National Telecommunications and Information Administration**NOTICES**

Grants and cooperative agreements; availability, etc.:

Public Telecommunications Facilities Program, 15154

Nuclear Regulatory Commission**NOTICES**

Agency information collection activities; proposals,
submissions, and approvals, 15246

Environmental statements; availability, etc.:

Novartis Pharmaceuticals Corp., 15247–15249

Applications, hearings, determinations, etc.:

Virginia Electric & Power Co., 15246–15247

Patent and Trademark Office**PROPOSED RULES**

Trademarks:

Madrid Protocol Implementation Act; rules of practice—

International applications and registrations; trademark-
related filings, 15119–15138

Postal Service**RULES**

Domestic Mail Manual:

Bound printed matter; flat-size mail co-packaging and co-
sacking, 15055–15059

Presidential Documents**EXECUTIVE ORDERS**

Government agencies and employees:

Classified national security information; further
amendment (EO 13292), 15313–15334

ADMINISTRATIVE ORDERS

Migration and Refugee Assistance Act of 1962; availability
of funds (Presidential Determination No. 2003-17 of
March 20, 2003), 15043

Public Debt Bureau

See Fiscal Service

Rural Housing Service**NOTICES**

Agency information collection activities; proposals,
submissions, and approvals, 15148

Rural Utilities Service**NOTICES**

Agency information collection activities; proposals,
submissions, and approvals, 15148–15150

Securities and Exchange Commission**NOTICES**

Agency information collection activities; proposals,
submissions, and approvals, 15249

Meetings; Sunshine Act, 15249–15250

Self-regulatory organizations; proposed rule changes:

American Stock Exchange LLC, 15250–15252

Chicago Board Options Exchange, Inc., 15252–15256

International Securities Exchange, Inc., 15256–15257

Pacific Exchange, Inc., 15257–15258

Small Business Administration**RULES**

Small business size standards:

Petroleum refiners, 15047–15050

NOTICES

Disaster loan areas:

Ohio, 15258–15259

Tennessee, 15259

State Department**NOTICES**

Art objects; importation for exhibition:

Whistler, Women, and Fashion, 15259

Substance Abuse and Mental Health Services Administration**NOTICES**

Agency information collection activities; proposals,
submissions, and approvals, 15215–15216

Surface Transportation Board**NOTICES**

Rail carriers:

Non-Class I railroads; calculation of variable costs in rate
complaint proceedings, 15263

Railroad operation, acquisition, construction, etc.:

Burlington Northern & Santa Fe Railway Co., 15263

Sunflower Rail Co., LLC, 15263–15264

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile Agreements

Transportation Department

See Federal Aviation Administration
See Surface Transportation Board

Treasury Department

See Alcohol and Tobacco Tax and Trade Bureau
See Fiscal Service
See Internal Revenue Service

Separate Parts In This Issue

Part II

Health and Human Services Department, Centers for Medicare & Medicaid Services, 15267–15312

Part III

Executive Office of the President, Presidential Documents, 15313–15334

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to <http://listserv.access.gpo.gov> and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR**Administrative Orders:**

Presidential

Determinations:

No. 2003-17 of March

20, 200315043

Executive Orders:

12356 (See 13292).....15315

12958 (Amended by

13292).....15315

13292.....15315

12 CFR

61515045

13 CFR

12115047

21 CFR**Proposed Rules:**

11115117

26 CFR**Proposed Rules:**

115118

3115119

27 CFR**Proposed Rules:**

715119

2515119

33 CFR

10015050

11715051

165 (2 documents)15051,
15053**37 CFR****Proposed Rules:**

215119

715119

39 CFR

11115055

40 CFR

5215059

72115061

Proposed Rules:

5215138

41 CFR

102-17315089

42 CFR

41615268

Proposed Rules:

Ch. IV15139

45 CFR

3215092

47 CFR

115096

73 (5 documents)15096,

15099, 15100

7615096

Proposed Rules:

73 (6 documents)15140,

15141, 15142, 15143

50 CFR

Ch. IV15100

67915115

Proposed Rules:

67915144

Presidential Documents

Title 3—

Presidential Determination No. 2003–17 of March 20, 2003**The President****Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended****Memorandum for the Secretary of State**

Pursuant to section (2)(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to \$22 million be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet unexpected urgent refugee and migration needs that are anticipated in the event of a future humanitarian emergency in the Middle East, to include contingency planning for such needs. Such an emergency may arise if it becomes necessary for the United States and other nations to use military force to disarm the Iraqi regime of its weapons of mass destruction. These funds may be used, as appropriate, to provide contributions to international, governmental, and nongovernmental organizations, as well as for administrative expenses to manage this response by the Bureau of Population, Refugees, and Migration.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, March 20, 2003.

Rules and Regulations

Federal Register

Vol. 68, No. 60

Friday, March 28, 2003

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

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

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052-AC14

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy—ABS and MBS Investments

AGENCY: Farm Credit Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: The Farm Credit Administration (FCA or agency) is issuing an interim final rule to amend our regulatory capital standards to allow Farm Credit System (FCS or System) institutions to use a lower risk weighting for highly rated investments in non-agency asset-backed securities (ABS) and mortgage-backed securities (MBS) that have reduced exposure to credit risk. We are adopting this rule so that the capital requirements for risk weighting of highly rated non-agency ABS and MBS investments will more closely reflect an institution's relative exposure to credit risk and help achieve a more consistent regulatory capital treatment with the other financial regulatory agencies. This interim rule will be effective until we take final action on planned further amendments to our capital regulations.

DATES: This regulation will become effective 30 days after publication in the *Federal Register* during which either or both houses of Congress are in session. We will publish notice of the effective date in the *Federal Register*. Please send your comments to the FCA by April 28, 2003.

ADDRESSES: Please send comments by electronic mail to "reg-comm@fca.gov" or through the Pending Regulations section of FCA's Web site, <http://www.fca.gov>. You may also send comments to Thomas G. McKenzie, Director, Regulation and Policy

Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 or by fax to (703) 734-5784. You may review copies of all comments at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: Laurie A. Rea, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498; TTY (703) 883-4434; or Jennifer A. Cohn, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our interim final rule are to:

- Ensure FCS institutions maintain capital levels commensurate with their relative exposure to credit risk by allowing them to use a lower risk weighting for highly rated non-agency¹ ABS and MBS investments that have reduced exposure to credit risk;
- Help achieve a more consistent regulatory capital treatment with the other financial regulatory agencies;²
- Allow FCS institutions' capital to be used more efficiently in serving agriculture and rural America and support of other System mission activities; and
- Reduce regulatory burden on FCS institutions.

II. Background

Section 615.5210 specifies the risk weightings that FCS institutions must use to calculate capital ratios for meeting our minimum risk-based capital standards. This regulation requires institutions to risk-weight their investments in non-agency ABS and MBS (including commercial MBS) as follows:

Investment type	Current risk weighting (Percent)
Non-agency ABS and MBS with maturities under 1 year	50
Non-agency ABS and MBS with maturities of 1 year or more	100

Section 615.5140 permits System institutions to invest in non-agency ABS and MBS only if these securities are rated in the highest credit rating by a nationally recognized statistical rating organization (NRSRO),³ are marketable,⁴ and satisfy certain other requirements.

In November 2001, the other financial regulatory agencies adopted amendments to their regulatory capital standards that, among other changes, allow banking organizations⁵ to apply a lower risk weighting to certain transactions that have reduced exposure to credit risk (including highly rated non-agency ABS and MBS investments).⁶ These changes were implemented so that the capital requirements would more closely reflect a banking organization's relative exposure to credit risk and help achieve a consistent regulatory capital treatment among the financial regulatory agencies for transactions involving similar risk. The changes were effective for banking organization transactions settled after January 1, 2002.

In a letter dated August 26, 2002, the Farm Credit Council (Council), on behalf of the FCS banks, asked the FCA to allow FCS banks to apply a lower risk weighting for capital computation purposes to investments in non-agency ABS and MBS that satisfy our criteria for eligible investments. The Council specifically asked the FCA to allow the banks to apply a 20-percent risk weighting to these investments.

Since fiscal year 2001, the FCA Board's regulatory plan has included a rulemaking project that would address many of the changes implemented by

¹ Non-agency securities are securities not issued or guaranteed by the United States Government, a Government agency (as defined in § 615.5201(f)), or a Government-sponsored agency (as defined in § 615.5201(g)).

² We refer collectively to the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision as the "other financial regulatory agencies."

³ Section 615.5131 defines NRSRO as a rating organization that the Securities and Exchange Commission recognizes as an NRSRO.

⁴ Section 615.5140(c) provides that an investment is marketable if you can sell it quickly at a price that closely reflects its fair value in an active and universally recognized secondary market.

⁵ We refer collectively to commercial banks, bank holding companies, and thrifts as "banking organizations."

⁶ See 66 FR 59614, November 29, 2001.

the other financial regulatory agencies, to the extent appropriate for System institutions. In the interim, the FCA Board has decided to allow FCS institutions to apply the risk-based capital treatment adopted by the other financial regulatory agencies to non-agency ABS and MBS investments the institutions are authorized to purchase and hold under § 615.5140.

Accordingly, upon the effective date of this interim final rule, FCS institutions will be authorized to apply a 20-percent risk-weight to highly rated non-agency ABS and MBS investments.

In formulating regulations, we strive continually to maintain approaches consistent with the other financial regulatory agencies. We have indicated in previous rulemakings that we intend to make our risk-based capital requirements generally consistent with the requirements of the other financial regulatory agencies, to the extent appropriate to the System institutions. Lowering the capital requirements on high quality investments would increase the lending capacity of FCS institutions by freeing up capital. The additional lending capacity could be used to serve agriculture and rural America and support other mission activities of the System.

In general, the FCA believes that allowing FCS institutions to apply a 20-percent risk weighting for non-agency ABS and MBS in which the institutions are authorized to invest would not adversely affect the risk-absorbing capacity or overall capitalization of the institutions. To apply the 20-percent risk-weighting treatment, the non-agency ABS and MBS investments must be eligible investments in accordance with § 615.5140. Under § 615.5140, a non-agency ABS or MBS investment is eligible only if it satisfies the following requirements, among others. It must:

- Satisfy the criteria specified for its asset class;
- Be marketable (*i.e.*, it must be able to be sold quickly at a price that closely reflects its fair value in an active and universally recognized secondary market); and
- Be rated at the highest credit rating by an NRSRO.

Investments that become “ineligible” investments under § 615.5140 must be immediately assigned to the 100-percent risk-weight category and disposed of in accordance with § 615.5143. Lastly, FCS institutions’ application of the 20-percent risk weighting to eligible non-agency ABS and MBS will be subject to the FCA Board’s further consideration and approval of a final rule that would amend the current risk-weighting

requirements of our capital regulations or other action.

III. Section Analysis

In the section analysis below, we explain our amendments to the current capital regulations.

Section 615.5210(f)(2)(ii)(L)—New Item Added to the 20-Percent Risk-weight Category

We add a new paragraph (L) to the 20-percent risk-weighting category in § 615.5210(f)(2)(ii) for non-agency ABS and MBS investments. We emphasize that the investment must meet the eligibility requirements of § 615.5140 of our investment regulations to be included in the 20-percent risk-weighting category. As mentioned previously, under § 615.5140, a non-agency ABS or MBS investment must receive the highest credit rating by an NRSRO and must be marketable (*i.e.*, may be able to be quickly sold at a price that closely reflects its fair value in an active and universally recognized secondary market).

IV. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), we find good cause exists for waiving the notice of proposed rulemaking as to this interim final rule because the notice is impracticable, unnecessary, and contrary to the public interest.

The other financial regulatory agencies recently adopted extensive amendments to their regulatory capital standards governing banking organizations so these standards would more closely reflect a banking organization’s relative exposure to credit risk. Those amendments, among others, include lowering to 20 percent the risk weighting for highly rated non-agency ABS and MBS investments, which have reduced exposure to credit risk. The changes were effective for transactions settled after January 1, 2002.

In addition, as discussed previously, since fiscal year 2001 the FCA Board’s regulatory plan has included a rulemaking project that would address many of the changes implemented by the other financial regulatory agencies and, to the extent appropriate for System institutions, make our risk-based capital requirements generally consistent with the other agencies’ requirements. In the interim, we believe good cause exists to allow FCS institutions to risk-weight non-agency ABS and MBS investments at 20 percent. As the other financial regulatory agencies have concluded, these investments have reduced exposure to credit risk. It is appropriate

to have consistent regulatory capital treatment for transactions involving similar risk among lenders. Finally, lowering the capital requirements on high quality investments would increase the lending capacity of FCS institutions by freeing up capital. The additional lending capacity can be used to serve agriculture and rural America and support other mission activities.

Accordingly, because this change is narrow and non-controversial, will relieve a regulatory burden, and will immediately further the mission of the System, we find that pre-promulgation comment is impracticable, unnecessary, and contrary to the public interest.

We are issuing these regulations with a request for comments and will consider all comments received (in response to both this request and to our future notice of proposed rulemaking) when adopting the regulations in final form.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not “small entities” as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

■ For the reasons stated in the preamble, we propose to amend part 615 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

■ 1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa-3, 2279aa-4, 2279aa-6, 2279aa-7, 2279aa-8, 2279aa-10, 2279aa-12); sec. 301(a) of Pub. L. 100-233, 101 Stat. 1568, 1608.

Subpart H—Capital Adequacy

2. Add new paragraph (f)(2)(ii)(L) to § 615.5210 to read as follows:

§ 615.5210 Computation of the permanent capital ratio.

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(L) Asset- or mortgage-backed securities (not issued or guaranteed by the United States Government, a Government agency, or a Government-sponsored agency).

* * * * *

Dated: March 24, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03-7387 Filed 3-27-03; 8:45 am]

BILLING CODE 6705-01-P

SMALL BUSINESS ADMINISTRATION**13 CFR Part 121**

RIN 3245-AE84

Small Business Size Regulations; Petroleum Refiners

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is modifying the small business size standard for petroleum refiners for purposes of Federal government procurement. The modification consists of the following: Increasing the capacity component of the standard from 75,000 barrels per day (bpd) to 125,000 barrels per calendar day (bpcd); defining capacity in bpcd; and measuring a refiner's total Operable Atmospheric Crude Oil Distillation Capacity. This is a better definition of what size a refiner must be to qualify as a small refiner for the Federal government's procurement of refined petroleum products. SBA is not changing the 1,500 employee size standard for this industry.

DATES: This rule is effective April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Carl J. Jordan, Office of Size Standards, (202) 205-6618 or sizestandards@sba.gov.

SUPPLEMENTARY INFORMATION:

Introduction: SBA is modifying the small business size standard for North American Industry Classification System (NAICS) 324110, Petroleum Refineries, for purposes of the Federal Government's procurement of refined petroleum products. The revised size

standard replaces current footnote 4 to SBA's Table of Small Business Size Standards, contained in 13 CFR 121.201. The footnote will now read as follows:

NAICS code 324110—For purposes of Government procurement, the petroleum refiner must be a concern that has no more than 1,500 employees nor more than 125,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

Background: On February 12, 2002, SBA proposed in the **Federal Register** (67 FR 6437): (1) To increase the capacity component of the standard from 75,000 bpd to 155,000 bpcd; (2) to clarify that the capacity component is measured in bpcd as defined by the U.S. Department of Energy, Energy Information Administration (EIA); and (3) to clarify that the capacity component is a measure of a refiner's total Operable Atmospheric Crude Oil Distillation Capacity, as used by EIA. The proposed rule included the history of this small business size standard, the reasons for the proposed changes, a description of how SBA establishes and evaluates small business size standards, and alternatives that SBA considered proposing.

Summary of Comments: SBA received 15 comments to the proposed rule, which are discussed below. They were received from the following organizations: one industry association, six small refiners, six-other-than small refiners, one Federal agency, and a United States Senator. The comments reflect no prevailing opinion about the level to which SBA should increase the capacity component, nor even whether or not SBA should increase it at all. Below SBA summarizes the four significant issues raised by the comments and provides SBA's consideration of those comments.

1. Whether SBA Should Retain Refiners' Capacity as a Component of the Size Standard

Comments received: All commenters but one stated that capacity is a valid and meaningful size measure for purposes of the Federal government's procurement of refined petroleum products. One commenter pointed out that other regulations, such as the Clean Air Act and the Emergency Petroleum Allocation Act, define small refiners and small refineries in terms of their

capacity. Another commenter supported that point by stating that it "is always helpful to the public for Federal agencies to clarify and standardize their definitions and measures." Another commenter stated that capacity is and has been the historical basis for small business determinations in the refinery industry, and believes that it is the best method for doing so.

SBA's position: SBA concurs with these commenters. Refining capacity is a relevant measure for the petroleum refining industry. Consistency with the historical size standard and with measurements used by other Federal agencies such as EIA and the Environmental Protection Agency (EPA) is important.

2. Whether SBA Should Replace "Barrels Per Day" With "Barrels Per Calendar Day"

Comments received: SBA received eight comments on this subject, four of which support and four of which do not support the change of term. Supporters favored the change as a useful standardization among Federal government agencies. Opponents believed it could allow for "gaming" and permit other than small refiners to qualify as small by reducing output, and that it relies too heavily on representations made to EPA.

SBA's position: SBA does not agree that the use of "barrels per calendar day" (bpcd) would necessarily lead to gaming. Bpcd measures a refiner's present capacity to produce, not its actual production. It is a static amount, that a refiner uses when it self-certifies that it is small to a Federal procuring agency, which is generally when it submits its initial offer including price (13 CFR 121.404). Since it could change, it may or may not be the same as what it stated in its annual certification to EIA. Nor is bpcd a measure of how much a refiner has produced, but rather how much a refiner "can process under usual operating conditions * * *" allowing for a number of limitations, as stated in EIA's definition of "Barrels Per Calendar Day." This term is also consistent with the standard measure that EIA uses to rank U.S. refiners by size, and that other agencies, such as EPA, use when applicable to enforcement of their regulations.

Bpcd, which includes both the refiners' operating and idle capacity, is an estimate (as are bpd and barrels per stream day), taking into consideration anticipated downtime, etc. Further, EIA's definition of "Barrels Per Calendar Day" takes into consideration, " * * * the environmental constraints associated with refinery operations"

(see EIA's definition of "Barrels per Calendar Day" in the glossary to Petroleum Supply Annual 2000, Vol. 1).

If a refiner believes that a successful bidder is not small when it self-certifies as such, then that refiner, or any other interested party, may file a size protest with the procuring agency's contracting officer. Provisions and procedures for doing so are set forth in SBA's Small Business Size Regulations, 13 CFR 121.1001–1010, "Procedures for Size Protests and Requests for Formal Size Determinations" and the Federal Acquisition Regulation (FAR) 48 CFR 19.302, "Protesting a small business representation."

SBA believes that standardizing measurement units among Federal agencies is an appropriate justification for this part of the rule, because it is consistent with the type of information refiners furnish EIA and that EIA reports. Additionally, the rule applies only to the Federal government's procurement of refined petroleum products.

3. Whether SBA should increase the capacity component to 155,000 bpcd

Comments received: Eight commenters opposed SBA's proposed increase to 155,000 bpcd. Three, including a national petroleum association, opposed the increase to 155,000 bpcd, and suggested 125,000 bpcd as an acceptable alternative because it would be sufficient to allow small refiners to increase their capacity without affecting their small refiner status. The association maintained that a 155,000 bpcd refiner is not a small business, and that it is well above the level for realizing economies of scale. In addition, noted the association, most small refiners, under the current definition, are not disadvantaged when competing in local and regional markets.

Four of the eight opposed any increase at all. The current size standard is adequate, one argued, to allow expansion, mergers or acquisition among existing small refiners. The commenter maintained that there are economic benefits that accrue to the small refiner that loses its eligibility as a small refiner by merger or acquisition. Accordingly, such growth provides the economies of scale that were not available to the small refiner and that will adequately compensate the small refiner for its loss of small refiner status.

Commenters also had concerns, if SBA were to adopt the proposed rule, with adding additional refiners to the existing universe of small refiners. Since newly eligible refiners would be substantially larger than currently small

refiners, the adoption of the proposed rule could adversely affect small refiners' ability to compete for Federal government contracts and undermine their competitiveness. Some stated that SBA's targeted 7.6 percent of domestic production capacity may not be correct in today's economy, and that a smaller share for small refiners may actually be more appropriate in today's competitive environment. Some commenters were particularly concerned with the possible effect on regional markets served by both small refiners and those refineries below 75,000 bpcd that are affiliated with others, and do not qualify as small refiners because of their total refiner capacity.

Another commenter expressed concern that the proposed rule might actually be detrimental to existing small refiners and result in less fuel supply in one or more states, particularly because of the inclusion of refiners that are significantly larger than the current small refiners. The commenter is concerned that newly classified small refiners would be located in geographic areas where there is now significant small refiner participation. The commenter also questioned SBA's targeted 7.6 percent share of domestic petroleum production.

Four commenters supported the increase to 155,000 bpcd as adequate to meet the purposes of the proposed rule, and stated that size standard should be no higher. A fifth, supporting an increase, commented that SBA should increase the size standard more, to about 160,000 bpcd. In the proposed rule, SBA projected that there would be no more than two refiners that would gain small refiner status if it adopted the proposed rule. The commenter stated that, at 155,000 bpcd, due to one refiner's increase in capacity that was not caused by merger, acquisition, *etc.*, there will be only one refiner with 1,500 employees or less that could qualify as a small refiner, not two. That is, there would remain only one U.S. refiner with 1,500 employees or less that would not qualify as a small refiner.

One of the five comments in support of an increase in the size standard noted that the reduced number of small refiners is due to closures because small refiners could not compete with larger, integrated refiners. Another stated that 155,000 bpd is consistent with the EPA's definition of a small refiner and that this size standard will restore small refiners' capacity to their historical levels. 155,000 bpd is below the average sized refiner, and allows for some limited expansion by small refiners.

One refiner agreed with SBA that a size standard of 75,000 bpd is too low.

The refiner suggested eliminating the capacity requirement, maintaining that it would be more far reaching than retaining a capacity limit.

Commenters suggested other alternatives as well. One would qualify a refiner as small if it has no more than 1,500 employees and/or no refinery larger than 100,000 bpd. Because EPA has granted certain compliance exemptions to refineries below 155,000 bpd and the exemptions can run until 2010, the commenter also suggested that SBA not increase the standard until the 2010 or when refineries have complied, whichever occurs first.

Another commenter was not entirely opposed to the increase, but offered an alternative—retain the 75,000 bpd capacity per refinery and increase the limit to 155,000 bpd for the entire company. The refiner also suggested including in the number of employees only those that are employed in the refining activity of the refiner. This refiner suggested eliminating the 1,500 employee size standard entirely, or counting only those that are engaged in refining operations. The commenter stated that the 1,500 employee size standard lacks meaning when measuring a refiner's resources available for competing for government contracts.

SBA's position: After evaluating all comments, SBA agrees that increasing the capacity component to 155,000 bpcd would not provide the best assistance for small refiners. SBA agrees with the position of the commenters that recommended a smaller increase of 125,000 bpcd. SBA accepts the position that refiners with 155,000 bpcd would be above the level needed to realizing economies of scale that accrue to refiners of that size and suffer no disadvantage when competing in local and regional markets. Further, because SBA recognizes that most if not all currently small refiners produce and market their products regionally, adding significantly larger refineries owned by newly designated small refiners to those regions could adversely affect small refiners' ability to bid for and fulfill Federal government contracts as small refiners. SBA accepts commenters' concerns that additional competition from substantially larger refiners in their competitive areas might adversely affect those refiners that are currently defined as small. From EIA's Form EIA-820, "Annual Refinery Report" as of January 1, 2002, SBA determined that increasing the standard to 125,000 bpcd will not characterize any refiners as small that are not small now. Therefore, increasing the size standard to 125,000 bpcd will not by itself increase the number of small refiners competing for Federal

government contracts. At that level, the small refiners' share of total U.S. petroleum refining will not be restored to the 7.6 percent share attained by the 1992 revision to the size standard. In its proposed rule, SBA did not intend to present the attainment of a particular small refiners' share as determinative of an appropriate size standard, but rather as only a reference to prior Agency actions. The data on the industry and the comments received on the proposed size standard taken as a whole serve as the basis for SBA's final decision to adopt 125,000 bpcd as the size standard. Although increasing the size standard to 125,000 bpcd does not create additional small refiners, it provided a significant increase in the size standard to allow current small refiners to realize economies of scale through an expansion of their operations or to merge with other small refiners.

SBA does not agree with the commenter that suggests more than one capacity limit. SBA believes this approach would be overly complex as well as a burdensome measure for Federal agencies to apply. Also, SBA does not agree that employees should either be eliminated from the standard or that only those employees in the refining industry be counted. NAICS classifies petroleum refining as a manufacturing industry, as did the Standard Industrial Classification system. Consistent with section 3(a)(2) of the Small Business Act, SBA has established size standards for all manufacturing concerns in terms of number of employees. Further, to include only those employees involved in refinery operations would conflict with SBA's Small Business Size Regulations, 13 CFR 121.106, "How does SBA calculate number of employees?" The regulation requires that all employees of the concern be used to measure the size of a concern, including those of its domestic and foreign affiliates, no matter how or where they are employed.

SBA does not "phase in" size standards. This is because SBA's size standards do not depend on whether or not a concern is small for another agency's program, or on when it comes into compliance with another agency's regulations. Some Federal agencies, such as EPA, outside of their Federal government procurement activities, use small business size standards mostly for regulatory enforcement. For instance, under EPA's gasoline sulfur regulations at 40 CFR part 80, a refiner is small if it had average crude capacity less than or equal to 155,000 bpcd for 1998. To delay applying a size standard for some companies until they have complied

with EPA's regulations, and not delay applying it to others, is inconsistent with SBA's rules and regulations. On a given Federal procurement, it does not treat all bidders equitably. A further reason why delaying application of the size standard until a refiner complies with environmental regulations is not a factor is that a refiner's bpcd capacity takes into effect, as noted above, "* * * the environmental constraints associated with refinery operations" (see EIA's definition of "Barrels per Calendar Day").

Small business size standards have their greatest incidence of applicability in Federal procurement. This 125,000 bpcd size standard relates only to the Federal government's procurement of refined petroleum products, and refiners' participation in the program is voluntary. Size standards for Federal procurement and for all Federal programs apply to every concern in its industry, regardless of the status of their compliance with rules and regulations that have different purposes.

4. Whether SBA Should Incorporate "Total Operable Atmospheric Crude Oil Distillation Capacity" into Its Small Business Definition

Comments received: Two commenters, an association and a refiner, support the added language to standardize the measure within the Federal government. Two other commenters, one a small refiner and the other not, did not see the need for the added clarification. None of the commenters, however, expressed a strong preference of one over the other.

SBA's position: SBA believes that adding "total Operable Atmospheric Crude Oil Distillation Capacity" does in fact add to the specificity of the definition by distinguishing it from refiners' "Downstream Charge Capacity." SBA's definition of a small refiner should, where practical, use terms consistent with those of EIA to avoid confusion among users of the definition. The phrase "total Operable Atmospheric Crude Oil Distillation Capacity" therefore clarifies and specifies the subject of measurement when determining a refiner's small refiner status, because it does not include "Downstream Charge Capacity."

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35.)

The Office of Management and Budget (OMB) has determined that this rule is a "significant" regulatory action for purposes of Executive Order 12866. Size

standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800. For the purpose of the Paperwork Reduction Act, 44 U.S.C. ch. 35, SBA has determined that this rule would not impose new reporting or record keeping requirements, other than those required of SBA. For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. Our Regulatory Impact Analysis follows.

Regulatory Impact Analysis

1. Is There a Need for This Regulatory Action?

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information to the proposed rule explained the approach SBA follows when analyzing a size standard for a particular industry. Based on that analysis and on the comments SBA received to the proposed rule, SBA believes an increase is supportable, but to a 125,000 bpcd instead of the proposed 155,000 bpcd.

2. What Are the Potential Benefits and Costs of This Regulatory Action?

The rule affects Federal government agencies purchasing refined petroleum products and small refiners that compete to sell refined petroleum products to the Federal government. Increasing the 75,000 bpcd size standard to 125,000 bpcd will enable small refiners to expand their refining operations or to merge with other small refiners. They can compete for larger Federal petroleum procurements set aside for small businesses or for the 8(a) and HUBZone Empowerment Contracting Programs, as well as those awarded through full and open competition after application of the HUBZone or small disadvantaged

business price evaluation preference or adjustment. Federal agencies will benefit from the higher size standards if more small refiners compete for more set-aside petroleum procurements. This will increase competition and lower the prices on set-aside petroleum procurements. The higher size standard will also likely influence Federal agencies to set aside more petroleum procurements. Price increases associated with set-aside procurements will be minimal because set-asides must be awarded at fair and reasonable prices. The increased size standard will allow, and possibly encourage, small refiners to increase their operational efficiencies without jeopardizing their small business status. Currently small refiners will become more competitive and this could result in lower prices to the Federal government and to private sector customers.

The higher size standard may have distributional effects between large and small refiners. The actual outcome of the gains and losses between small and large refiners cannot be estimated with certainty. Small refiners may obtain petroleum contracts from what would have been awarded to refiners that are not small. Large refiners might lose some Federal petroleum contracts to small refiners if Federal agencies decide to set aside more petroleum procurements for small refiners. The potential loss of contracts to large businesses would be limited to the amount of petroleum that expanding small refiners were willing and able to sell to the Federal government. Small nonmanufacturers can also obtain additional petroleum contracts as a result of a higher petroleum size standard. On set-aside petroleum procurements, a small nonmanufacturer must supply the product of a small petroleum refiner. With an effectively larger base of small refiners, nonmanufacturers would have access to a larger supply of petroleum products from small refiners. The potential gain in contracting opportunities for small nonmanufacturers would be limited to the amount of petroleum the expanded small refiners are willing and able to supply through a third party as opposed to selling directly to the Federal government.

The revision to the current size standard for petroleum refineries is consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administrator's objectives. One of SBA's goals in support of the Administrator's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit,

government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with State, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism to develop their own size standards.

For purposes of the Regulatory Flexibility Act (RFA), SBA has determined that this rule does not have a significant economic effect on a substantial number of small entities. As stated in the **SUPPLEMENTARY INFORMATION** section, SBA estimates that this rule will create no additional small refiners. Accordingly, SBA does not believe there will be significantly increased competition that could harm small refiners. On the contrary, small refiners will be able to bid on and perform more and larger Federal procurements using some of the same business practices as the largest refiners (though on a smaller scale), proportionate to their sizes. In addition, since Federal procurement programs are voluntary, this rule will not impose any significant costs on any small refiners participating in the Federal procurement of petroleum programs. Further, the rule will not affect the amount of refined petroleum purchased by the Federal government. Federal government procurement dollars are expected to remain about the same. In addition, since more small refiners will be able to share resources, they will be eligible for more Federal procurement dollars.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs-business, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons stated in the preamble, SBA amends part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and sec. 304, Pub. L. 103-403, 108 Stat. 4175, 4188.

■ 2. In § 121.201, revise footnote 4 at the end of the table titled "Small Business

Size Standards by NAICS industry" to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

FOOTNOTES

* * * * *

■ 4. *NAICS code 324110*—For purposes of Government procurement, the petroleum refiner must be a concern that has no more than 1,500 employees nor more than 125,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

* * * * *

Dated: February 5, 2003.

Hector V. Barreto,
Administrator.

[FR Doc. 03-7677 Filed 3-27-03; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05-03-030]

RIN 1625-AA08

Special Local Regulations for Marine Events; Severn River, College Creek, and Weems Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.518 for the U.S. Naval Academy Crew Races, marine events to be held April 26, 2003 and May 25, 2003, on the waters of the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the events. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

EFFECTIVE DATES: 33 CFR 100.518 is effective from 5:30 a.m. to 9:45 a.m. on

April 26, 2003 and from 5:30 a.m. to 7:45 a.m. on May 25, 2002.

FOR FURTHER INFORMATION CONTACT: Ron Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226-1971, at (410) 576-2674.

SUPPLEMENTARY INFORMATION: The U.S. Naval Academy will sponsor crew races on the waters of the Severn River at Annapolis, Maryland. The events will consist of intercollegiate crew rowing teams racing along a 2000-meter course on the waters of the Severn River. A fleet of spectator vessels is expected to gather near the event site to view the competition. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.518 will be in effect for the duration of the event. Under provisions of 33 CFR 100.518, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will only be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: March 10, 2003.

James D. Hull,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 03-7384 Filed 3-27-03; 8:45 am]

BILLING CODE 4910-15-U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07-03-046]

Drawbridge Operation Regulations; Sanibel Causeway Bridge, Okeechobee Waterway, Punta Rassa, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Sanibel Causeway bridge across the Okeechobee Waterway, Punta Rassa, Florida. This temporary deviation allows the owner to facilitate the evacuation of vehicular traffic during the afternoon rush hour, while emergency repairs to the two low level fixed bridges that span a portion of the

causeway are underway, by allowing the bascule bridge to open only on the hour, from 2 p.m. until 6 p.m., Monday through Friday, from March 17, 2003 until April 25, 2003.

DATES: This temporary deviation is effective from 2 p.m., March 17, 2003, until 6 p.m., April 25, 2003.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07-03-046] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Manager, Seventh Coast Guard District, Bridge Branch at (305) 415-6743.

SUPPLEMENTARY INFORMATION: The Sanibel Causeway drawbridge is part of a two-lane narrow, undivided arterial roadway, which is the only roadway on and off Sanibel Island. This roadway also has two low level fixed bridges, which are in need of emergency repairs and has necessitated the owner to provide only one lane of arterial service to vehicular traffic for safety reasons. In order to complete emergency repairs in a safe and timely manner, the owner of all three bridges has requested that the bascule bridge only open on the hour, from 2 p.m. until 6 p.m., Monday through Friday, March 17, 2003 to April 25, 2003, in order to safely allow the rush hour traffic to exit the island via the causeway.

The Commander, Seventh Coast Guard District has granted a temporary deviation from the operating requirements listed in 33 CFR 117.317(j) to allow the Sanibel Causeway drawbridge to only open on the hour from 2 p.m. until 6 p.m., Monday through Friday, March 17, 2003 to April 25, 2003.

Dated: March 13, 2003.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 03-7383 Filed 3-27-03; 8:45 am]

BILLING CODE 4910-15-U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05-02-080]

RIN 1625-AA00 (Formerly 2115-AA97)

Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone in the waters of the Chesapeake Bay near the Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, Maryland. This security zone is necessary to help ensure public safety and security. The security zone will prohibit vessels and persons from entering a well-defined area around Calvert Cliffs Nuclear Power Plant.

DATES: This rule is effective at 5 p.m. on March 31, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-02-080 and are available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226-1791 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576-2513.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 28, 2002, we published a temporary final rule (TFR) entitled "Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD" in the **Federal Register** (67 FR 9203) that expired on June 15, 2002. On June 17, 2002, we published a change of effective date to a temporary final rule (TFR) entitled "Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD" in the **Federal Register** (67 FR 41177) that expired on September 30, 2002, and on October 1, 2002, we published another change of effective date to a temporary final rule (TFR) entitled "Security Zone; Calvert Cliffs Nuclear

Power Plant, Chesapeake Bay, Calvert County, MD” in the **Federal Register** (67 FR 61494) that expires on March 31, 2003.

On October 18, 2002, we published a notice of proposed rulemaking (NPRM) entitled “Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD” in the **Federal Register** (67 FR 64345). We received three letters commenting on the proposed rule.

The Captain of the Port has determined that the need for this security zone continues to exist. Accordingly, this rule makes final the proposed rule published in the **Federal Register** on October 18, 2002. The zone is approximately 300 by 500 yards and is marked by white cylindrical buoys in the Chesapeake Bay near the Calvert Cliffs Nuclear Power Plant, in Calvert County, Maryland.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. It is urgently necessary, for public safety and Power Plant security, that a continuous security zone be established at the Calvert Cliffs facility effective at 5 p.m. on March 31, 2003. This rule will become effective upon expiration of the current temporary rule (67 FR 61494, October 1, 2002).

Background and Purpose

Based on the September 11, 2001 terrorist attacks on the World Trade Center buildings in New York and the Pentagon building in Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Calvert Cliffs Nuclear Power Plant. On February 28, 2002, the Coast Guard published a temporary rule entitled “Security zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD,” in the **Federal Register** (67 FR 9203). The temporary rule established a security zone around the Calvert Cliffs Nuclear Power Plant. Based on a continuing need for the protection of the plant, the effective date of the rule establishing a temporary security zone surrounding the plant was extended until 5 p.m., March 31, 2003. There is no indication that the present rule has been burdensome on the maritime public; users of the areas surrounding the plant are able to pass safely outside the zone. Three letters commenting on the present rule have been received by the public.

Discussion of Comments and Changes

The Coast Guard received three written comments on the proposed rule.

Two letters included comments that strongly supported the proposed security zone, one of which requested that Coast Guard increase the size of the zone to provide for additional security. The size and location of the zone was based on a request from the Calvert Cliffs Nuclear Power Plant. The power plant is aware of the issues raised by this comment and feels that the size and location of the security zone is sufficient to provide the desired increase in security.

The third letter included comments from the Canoe Cruisers Association of Greater Washington, DC, Inc. stating that the size of the proposed security zone is reasonable; however, future proposals to expand its dimensions might compromise waterway user safety far from shore and interrupt waterway user access to the shore. The Coast Guard has considered these issues and has determined that no changes to the proposed rule are required. One commenter requested a public meeting. The Coast Guard has considered this request and determined that there is not sufficient public interest to conduct a public meeting.

Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security.

Small Entities

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

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

We received three letters commenting on the interim rule. Comments from the Canoe Cruisers Association of Greater Washington, DC, Inc. state that the security zone proposal is reasonable; however, future proposals to expand its dimensions might compromise waterway user safety far from shore and

interrupt waterway user access to the shore.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34) (g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation because we are establishing a security zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.505 to read as follows:

§ 165.505 Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, Maryland.

(a) *Location.* The following area is a security zone: All waters of the Chesapeake Bay, from surface to bottom, encompassed by lines connecting the following points, beginning at 38°26'06" N, 076°26'18" W, thence to 38°26'10" N, 076°26'12" W, thence to 38°26'21" N, 076°26'28" W, thence to 38°26'14" N, 076°26'33" W, thence to beginning at 38°26'06" N, 076°26'18" W. These coordinates are based upon North American Datum (NAD) 1983.

(b) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 410-576-2693 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority:* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: March 4, 2003.

Evan Q. Kahler,

Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland.

[FR Doc. 03-7385 Filed 3-27-03; 8:45 am]

BILLING CODE 4910-15-U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13-03-004]

RIN 1625 AA00

Safety Zones; Fireworks Displays in the Captain of the Port Portland Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones on the Willamette River during fireworks displays. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with these displays. Entry into these safety zones is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective from 9:30 p.m. (PDT) on May 2, 2003 to 10:20 p.m. (PDT) on May 30, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [CGD13-03-004] and are available for inspection or copying at the U.S. Coast Guard MSO/Group Portland, 6767 N. Basin Ave, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Tad Drozdowski, c/o Captain of the Port, Portland 6767 N. Basin Avenue, Portland, Oregon 97217, at (503) 240-2584.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and spectators gathering in the vicinity of the various fireworks launching barges and displays. If normal notice and comment procedures were followed, this rule would not become effective until after the dates of the events. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest. Permanent safety zones for these events are being submitted through the normal rulemaking process for 2004.

Background and Purpose

The Coast Guard is adopting temporary safety zone regulations for safe fireworks displays. One display is scheduled to start at 9:30 p.m. on May 2 and last for thirty minutes. The other event is scheduled to start at 9:50 p.m. on May 30 and also last for thirty minutes. Both events occur on the Willamette River in Portland, Oregon.

These events may result in a number of vessels congregating near fireworks launching barges. The safety zones are needed to protect watercraft and their occupants from safety hazards associated with fireworks displays. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal and local agencies.

Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security. The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures act of DHS is unnecessary. This expectation is based on the fact that the regulated areas established by the proposed regulation will encompass less than one-half of a mile of the Willamette River for a period of only 30 minutes in the late evening on two separate dates.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Willamette River during the times mentioned under *Background and Purpose*. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only thirty minutes during two evenings when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is provided for temporary safety zones of less than one week in duration. This rule establishes safety zones with a duration of thirty minutes. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A temporary § 165.T13-003 is added to read as follows:

§ 165.T13-003 Safety Zones; Fireworks displays in the Captain of the Port Portland Zone.

(a) *Safety Zones.* The following areas are designated safety zones:

(1) *Cinco de Mayo Fireworks Display, Portland, OR.*

(i) *Location.* All waters of the Willamette River bounded by the Morrison Bridge to the north, Hawthorne Bridge to the south, and shoreline both to the east and the west.

(ii) *Enforcement period.* From 9:30 p.m. to 10 p.m. (PDT) on May 2, 2003.

(2) *Portland Rose Festival Fireworks Display, Portland, OR.*

(i) *Location.* All waters of the Willamette River bounded by the Morrison Bridge to the north, Hawthorne Bridge to the south, and shoreline both to the east and the west.

(ii) *Enforcement period.* From 9:50 p.m. to 10:20 p.m. (PDT) on May 30, 2003.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

Dated: March 13, 2003.

Paul D. Jewell,

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

[FR Doc. 03-7386 Filed 3-27-03; 8:45 am]

BILLING CODE 4910-15-U

POSTAL SERVICE

39 CFR Part 111

Bound Printed Matter: Flat-Size Mail Co-Packaging and Co-Sacking

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: In this final rule, the Postal Service adopts revisions to the *Domestic Mail Manual* (DMM) that will provide new mail preparation standards for the co-packaging and co-sacking of flat-size Bound Printed Matter (BPM) mailpieces.

Co-packaging is an alternate preparation option that allows the combining of Presorted pieces and barcoded pieces within the same package. Co-sacking is a preparation method that allows under specific circumstances the combining of packages of Presorted rate pieces, packages of barcoded pieces, and co-packaged pieces, within the same sack.

Effective April 3, 2003, mailers may begin using the co-packaging standards for BPM flats. Although co-packaging is optional, if a mailer chooses to co-package, then the co-packaged pieces must also be co-sacked. The required use of the co-sacking preparation standards for pieces that are not co-packaged becomes mandatory on September 1, 2003. Regardless of the date presented, all mailings that are co-packaged must also be co-sacked.

EFFECTIVE DATE: April 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jane Stefaniak at (703) 292-3548, Mailing Standards, United States Postal Service.

SUPPLEMENTARY INFORMATION: In a proposed rule published in the *Federal Register* on November 19, 2002 (67 FR 69698-69702), the Postal Service proposed to extend the mail preparation standards for co-packaging and co-sacking in DMM M900 to include flat-size BPM mailpieces that are compatible with processing on the automated flat sorting machine (AFSM) 100. Also included as part of the November 19, 2002, proposed rule was a proposal to change the minimum weight for Presorted rate BPM flats claimed at the destination delivery unit (DDU) rates from "more than 1 pound" to "more than 20 ounces." In the November 19, 2002, proposed rule, the Postal Service solicited written comments from interested parties. However, no written comments were received. The Postal Service is therefore adopting the content of the proposed rule with the following two changes:

1. The mandatory effective date for the use of the new co-sacking standards for flat-size BPM pieces is September 1, 2003, rather than June 1, 2003, as stated in the proposed rule.

2. The proposal to increase the minimum weight for Presorted rate BPM flats claimed at the DDU rates will not be adopted at this time.

Background

Through several previous rulemakings published in the *Federal Register* (65 FR 52479-52528, 66 FR 28659-28666, and 66 FR 58944-58952), the Postal Service has established mail preparation standards in DMM M900 for co-packaging and co-traying flat-size First-Class Mail, and for co-packaging and co-sacking nonletter-size Periodicals and flat-size Standard Mail. Extending these requirements to allow the co-packaging and co-sacking of flat-size BPM mailpieces that are compatible with processing on the AFSM 100 is reasonable and in the best interests of both mailers and the Postal Service.

Presorted rate BPM flats (no barcode required) and Presorted rate BPM flats that bear a ZIP+4 or delivery point barcode and claim the barcoded discount are usually both processed by the Postal Service within the same operation. For this reason, allowing packages of flat-size barcoded and nonbarcoded pieces to be combined within the same sack (*i.e.*, co-sacking) can provide operational efficiencies that could reduce costs. Additionally, the need for the Postal Service to receive flat-size barcoded and nonbarcoded pieces in segregated packages no longer exists due to technological advances, such as the optical character reader (OCR) and image lift capabilities of the AFSM 100. Therefore, it would not be operationally beneficial to continue to require the separate preparation of Presorted rate BPM flats that qualify for and claim the barcoded discount and those that do not qualify for the barcoded discount. Continuing to segregate barcoded and nonbarcoded flats would result in more packages and sacks, reduce the average depth of sort, and cause additional workhours for the Postal Service associated with sorting, opening, and preparing flats for processing.

Under the new co-packaging standards for flat-size BPM mailpieces, mailers will have the option to co-package (*i.e.*, sort into the same package) Presorted rate BPM flat-size pieces qualifying for the barcoded discount and Presorted rate BPM flat-size pieces not qualifying for the barcoded discount. Regardless of the date presented for mailing, co-packaged pieces must be co-sacked under DMM M910. Effective September 1, 2003, the new co-sacking standards for flat-size BPM mailpieces will require that mailers co-sack (*i.e.*, sort into the same sack) packages of Presorted rate pieces qualifying for and claiming the barcoded discount with packages of Presorted rate pieces not qualifying for the barcoded discount. The containerization methods permitted for First-Class Mail, Periodicals, and Standard Mail in current DMM M920, M930, and M940 will not be available for BPM.

Co-Packaging Standards (Optional)

The new standards for the optional co-packaging of BPM flats include the following:

- All pieces must weigh 20 ounces or less and meet the AFSM 100 criteria for automation-compatible flat-size mail in DMM C820.
- A separate minimum of 300 Presorted rate pieces qualifying for and claiming the barcoded discount and a

separate minimum of 300 Presorted rate pieces (not qualifying for the barcoded discount) are required. The combined total number of pieces qualifying for and claiming the barcoded discount and the Presorted rate must be used to meet the minimum volume requirements for packages and sacks.

- Each piece in the Presorted rate mailing qualifying for and claiming the barcoded discount must bear a correct and readable ZIP+4 or delivery point barcode (DPBC) under DMM C840. Each piece in the Presorted rate mailing must bear a correct and readable 5-digit barcode under DMM C840.

- Presorted rate pieces qualifying for and claiming the barcoded discount must be sorted together with the Presorted rate pieces, but only one physical package for each logical presort destination is permitted to contain both pieces claiming the barcoded discount and pieces not claiming the discount, unless presented using an approved manifest mailing system under DMM P910.

- Co-packaged pieces must also be co-sacked under DMM M910.

Co-Sacking Standards (Required September 1, 2003)

The new standards for the required co-sacking of BPM flats include the following:

- Packages prepared as part of the Presorted rate mailing qualifying for and claiming the barcoded discount and packages prepared as part of the Presorted rate mailing (not qualifying for the barcoded discount) must be co-sacked, effective September 1, 2003. However, mailers who choose to use the co-packaging standards prior to September 1, 2003, will be required to co-sack.

- Packages of flats qualifying for and claiming the barcoded discount that are co-sacked with packages of Presorted rate flats must be part of the same mailing job.

- Both the Presorted rate mailing qualifying for and claiming the barcoded discount and the Presorted rate mailing must separately meet the applicable rate eligibility and volume requirements.

- Packages that are co-sacked under DMM M910 are not required to be co-packaged.

Documentation Requirements

Standardized documentation as detailed in DMM P012 is required for mailings prepared under the new standards for co-packaging and co-sacking. The following applies:

- Documentation for a co-packaged mailing must indicate by zone (when

applicable) for each package sortation level, the number of Presorted rate pieces qualifying for the barcoded discount and the number of Presorted rate pieces (not claiming the barcoded discount) that are contained in each package.

- Documentation for a co-sacked mailing must indicate by zone (when applicable) for each sack sortation level, the number of Presorted rate pieces qualifying for the barcoded discount and the number of Presorted rate pieces (not claiming the barcoded discount) that are contained in each sack.

Effective Dates

Effective April 3, 2003, mailers may begin using the co-packaging standards for BPM flats. The standards for co-packaging are optional. However, if a mailer chooses to co-package under DMM M950, then the co-packaged pieces must be co-sacked under DMM M910. The required use of the co-sacking preparation standards (for pieces that are not co-packaged) becomes mandatory on September 1, 2003. Regardless of the date presented, all mailings that are co-packaged under DMM M950 must be co-sacked under DMM M910.

Based on the reasons presented in the proposed rule and those noted above, and in consideration that no public comments were received, the Postal Service adopts the following changes to the *Domestic Mail Manual*, which is incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.

List of Subjects in 39 CFR Part 111

Administrative Practice and Procedure, Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

Domestic Mail Manual (DMM)

* * * * *

M MAIL PREPARATION AND SORTATION

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 TERMS AND CONDITIONS

* * * * *

1.3 Preparation Instructions

For purposes of preparing mail:

* * * * *

[Revise item ae to read as follows:]

ae. Co-packaging is an alternate preparation method available under M950 for First-Class Mail, Periodicals, and Standard Mail that allows the combining of flat-size automation rate and Presorted rate pieces within the same package under the single minimum package size requirement. Co-packaging is also available for combining within the same package flat-size Bound Printed Matter Presorted rate pieces qualifying for and claiming the barcoded discount and Presorted rate pieces not qualifying for the barcoded discount. Regardless of the class of mail, pieces may not be combined in more than one physical package for each logical presort destination unless presented using an approved manifest mailing system under P910.

1.4 Mailing

Mailings are defined as:

* * * * *

[Revise the first paragraph of item e by adding references to the advanced preparation options for flat-size Bound Printed Matter in M900 to read as follows (the remainder of 1.4 is unchanged):]

e. Package Services. Except for single-piece rate pieces not otherwise subject to a minimum mailing requirement that are presented under an approved manifest mailing system under P910, the types of Package Services listed below may not be part of the same mailing even if in the same processing category. See M910 and M950 for the advanced preparation options available for flat-size Bound Printed Matter.

* * * * *

M030 Containers

* * * * *

M032 Barcoded Labels

1.0 BASIC STANDARDS—TRAY AND SACK LABELS

* * * * *

Exhibit 1.3a 3-Digit Content Identifier Numbers

[Revise Exhibit 1.3a by adding new categories and content identifier numbers for co-sacked Bound Printed Matter pieces to read as follows:]

Package Services

BPM Flats—Co-Sacked Barcoded and Presorted:

5-digits sacks	648 PSVC FLTS 5D BC/NBC
3-digits sacks	661 PSVC FLTS 3D BC/NBC
SCF sacks	667 PSVC FLTS SCF BC/NBC
ADC sacks	668 PSVC FLTS ADC BC/NBC
Mixed ADC sacks	669 PSVC FLTS BC/NBC WKG

M700 Package Services

M720 Bound Printed Matter

M722 Presorted Bound Printed Matter

1.0 BASIC STANDARDS

1.5 Co-Sacking Flats With Barcoded Mail

The following standards apply:
 a. If the mailing job contains a carrier route mailing, a Presorted rate mailing qualifying for and claiming the barcoded discount, and a Presorted rate mailing, the job must be prepared as follows:

(1) Prior to September 1, 2003, the carrier route mailing must be prepared under M723, the Presorted rate mailing qualifying for and claiming the barcoded discount must be prepared under M820, and the Presorted rate mailing must be prepared under M722.

(2) Effective September 1, 2003, the carrier route mailing must be prepared under M723, and the Presorted rate mailing qualifying for and claiming the barcoded discount and the Presorted rate mailing must be prepared under the co-sacking standards in M910. Presorted rate pieces qualifying for and claiming the barcoded discount may be co-packaged with Presorted rate pieces under M950. Regardless of the date presented for mailing, co-packaged pieces must be co-sacked under M910.

b. If the mailing job contains only a Presorted rate mailing qualifying for and claiming the barcoded discount and a Presorted rate mailing, the job must be prepared as follows:

(1) Prior to September 1, 2003, the Presorted rate mailing qualifying for and claiming the barcoded discount must be prepared under M820, and the Presorted rate mailing must be prepared under M722.

(2) Effective September 1, 2003, the mailing job must be prepared under the co-sacking standards in M910. Presorted rate pieces qualifying for and claiming the barcoded discount may be co-

packaged with Presorted rate pieces under M950. Regardless of the date presented for mailing, co-packaged pieces must be co-sacked under M910.

c. If the mailing job contains only a carrier route mailing and a Presorted rate mailing qualifying for and claiming the barcoded discount, the job must be sacked separately under the applicable standards in M723 and M820.

d. If the mailing job contains only a carrier route mailing and a Presorted rate mailing, each mailing must be sacked separately under the applicable standards M722 and M723.

M800 All Automation Mail

M820 Flat-Size Mail

1.0 BASIC STANDARDS

1.10 Co-Traying, Co-Sacking, and Co-Packaging With Presorted Rate Mail

The following standards apply:

[Add new item d for Bound Printed Matter to read as follows:]

d. Bound Printed Matter:

(1) If the mailing job contains a carrier route mailing, a Presorted rate mailing qualifying for and claiming the barcoded discount, and a Presorted rate mailing, the job must be prepared as follows:

(a) Prior to September 1, 2003, the carrier route mailing must be prepared under M723, the Presorted rate mailing qualifying for the barcoded discount must be prepared under M820, and the Presorted rate mailing must be prepared under M722.

(b) Effective September 1, 2003, the carrier route mailing must be prepared under M723, and the Presorted rate mailing qualifying for the barcoded discount and the Presorted rate mailing must be prepared under the co-sacking standards in M910. Presorted rate pieces qualifying for the barcoded discount may be co-packaged with Presorted rate pieces under M950. Regardless of the date presented for mailing, co-packaged pieces must be co-sacked under M910.

(2) If the mailing job contains only a Presorted rate mailing qualifying for and claiming the barcoded discount and a Presorted rate mailing, the job must be prepared as follows:

(a) Prior to September 1, 2003, the Presorted rate mailing qualifying for and claiming the barcoded discount must be prepared under M820 and the Presorted rate mailing must be prepared under M722.

(b) Effective September 1, 2003, the Presorted rate mailing qualifying for and claiming the barcoded discount and the Presorted rate mailing must be prepared under the co-sacking standards in M910. Presorted rate pieces qualifying for and claiming the barcoded discount may be co-packaged with Presorted rate pieces under M950. Regardless of the date presented for mailing, co-packaged pieces must be co-sacked under M910.

(3) If the mailing job contains only a carrier route mailing and a Presorted rate mailing qualifying for and claiming the barcoded discount, each mailing must be prepared separately under the applicable standards in M723 and M820.

6.0 BOUND PRINTED MATTER

6.2 Sack Preparation and Labeling

[Revise 6.2 to read as follows:]

Preparation sequence, sack size, and labeling:

a. 5-digit scheme (optional, containing 5-digit scheme packages only); minimum 20 addressed pieces; labeling:

(1) Line 1: L007.

(2) Line 2: "PSVC FLTS 5D SCH BC."

b. 5-digit (required); minimum 20 addressed pieces; labeling:

(1) Line 1: city, state, and 5-digit ZIP Code on mail, preceded for military mail by correct prefix under M031.

(2) Line 2: "PSVC FLTS 5D BC."

c. 3-digit (required, except for optional packages with 3-digit ZIP Code prefixes indicated by an "N" in L002, when optional SCF sacks are prepared); minimum 20 addressed pieces; labeling:

(1) Line 1: L002, Column A.

(2) Line 2: "PSVC FLTS 3D BC."

d. SCF (optional); minimum 20 addressed pieces; labeling:

(1) Line 1: L005.
(2) Line 2: "PSVC FLTS SCF BC."
e. ADC (required); minimum 20 addressed pieces; labeling:

(1) Line 1: L004.
(2) Line 2: "PSVC FLTS ADC BC."
f. Mixed ADC (required); no minimum; labeling:

(1) Line 1: L803 or, if entered by mailer at an ASF or BMC, L802.
(2) Line 2: "PSVC FLTS BC WKG."

M900 Advanced Preparation Options for Flats

M910 Co-Traying and Co-Sacking Packages of Automation and Presorted Mailings

[Revise the Summary to include the new option for preparing flat-size Bound Printed Matter, to read as follows:]

Summary

M910 describes the requirements for co-traying packages of flat-size automation rate and Presorted rate First-Class Mail. It also describes the requirements for co-sacking packages of nonletter-size automation rate and Presorted rate Periodicals, packages of flat-size automation rate and Presorted rate Standard Mail, and packages of flat-size Presorted rate Bound Printed Matter qualifying for and claiming the barcoded discount and Presorted rate Bound Printed Matter (not qualifying for the barcoded discount).

* * * * *

[Add new 4.0, Bound Printed Matter, to provide preparation requirements for co-sacking flat-size Bound Printed Matter to read as follows:]

4.0 BOUND PRINTED MATTER

4.1 Basic Standards

Effective September 1, 2003, packages of flat-size pieces in a Presorted rate mailing qualifying for and claiming the barcoded discount must be co-sacked with packages of flat-size pieces from a Presorted rate mailing under the following conditions:

a. The Presorted rate pieces qualifying for and claiming the barcoded discount and the Presorted rate pieces must be part of the same mailing job and be reported on the same postage statement.

b. The Presorted rate pieces qualifying for and claiming the barcoded discount must meet the criteria for flat-size mail under C820. Pieces in the Presorted rate mailing must meet the criteria for flat-size mail under C050.

c. The Presorted rate mailing qualifying for and claiming the barcoded discount must meet the eligibility criteria in E712, the mail preparation standards in M820, the

sacking requirements in 4.4, and the documentation criteria in 4.1h.

d. The Presorted rate mailing must meet the eligibility criteria in E712, the mail preparation standards in M722, the sacking requirements in 4.4, and the documentation criteria in 4.1h.

e. The rates for pieces in the Presorted rate mailing qualifying for and claiming the barcoded discount are applied based on meeting the sortation requirements in M820, and when applicable, the zone. The rates for pieces in the Presorted rate mailing are based on meeting the sortation requirements in M722, and when applicable, the zone.

f. The pieces must be marked according to M012.
g. The packages prepared from the Presorted rate mailing qualifying for the barcoded discount and the packages prepared from the Presorted rate mailing must be sorted into the same sacks as described in 4.4.

h. A complete, signed postage statement(s), using the correct USPS form or an approved facsimile, must accompany each mailing job prepared under these procedures. In addition to the applicable postage statement, standardized documentation under P012 must be submitted with each co-sacked mailing job that describes for each sack sortation level the number of pieces qualifying for the barcoded discount and the number of pieces qualifying for each applicable Presorted rate.

i. Barcoded sack labels under M032 must be used to label the sacks.

4.2 Package Preparation

Except for mail prepared under the co-packaging option in 4.3, the Presorted rate mailing qualifying for and claiming the barcoded discount must be packaged and labeled under M820, and the Presorted rate mailing must be packaged and labeled under M722.

4.3 Optional Co-Packaging Preparation

As an alternative to the basic packaging requirements in 4.2, flat-size Presorted rate pieces qualifying for and claiming the barcoded discount may be co-packaged with flat-size Presorted rate pieces, subject to M950.

4.4 Sack Preparation and Labeling

Packages of Presorted rate pieces qualifying for and claiming the barcoded discount and Presorted rate pieces prepared under 4.2 or 4.3 must be presorted together into sacks (co-sacked) using the following preparation sequence, sack size, and labeling:

a. 5-digit (required); minimum 20 addressed pieces; labeling:

(1) Line 1: city, state, and 5-digit ZIP Code destination of packages, preceded for military mail by the correct prefix under M031.

(2) Line 2: "PSVC FLTS 5D BC/NBC."
b. 3-digit (required, except for optional packages with 3-digit ZIP Code prefixes indicated by an "N" in L002, when optional SCF sacks are prepared); minimum 20 addressed pieces; labeling:

(1) Line 1: L002, Column A.
(2) Line 2: "PSVC FLTS 3D BC/NBC."
c. SCF (optional); minimum 20 addressed pieces; labeling:

(1) Line 1: L005.
(2) Line 2: "PSVC FLTS SCF BC/NBC."
d. ADC (required); minimum 20 addressed pieces (use L004 to determine ZIP Codes served by each ADC); labeling:

(1) Line 1: L004.
(2) Line 2: "PSVC FLTS ADC BC/NBC."

e. Mixed ADC (required); no minimum; labeling:
(1) Line 1: L803 or, if entered by mailer at an ASF or BMC, L802.

(2) Line 2: "PSVC FLTS BC/NBC WKG."

* * * * *

M950 Co-Packaging Automation Rate and Presorted Rate Pieces

[Revise the Summary to include the new option for preparing flat-size Bound Printed Matter to read as follows:]

Summary

M950 describes the requirements for co-packaging flat-size automation rate and Presorted rate First-Class Mail, nonletter-size automation rate and Presorted rate Periodicals, flat-size automation rate and Presorted rate Standard Mail, and flat-size Presorted rate Bound Printed Matter qualifying for and claiming the barcoded discount and Presorted rate Bound Printed Matter (not qualifying for the barcoded discount).

* * * * *

[Add new 4.0, Bound Printed Matter, to provide co-packaging preparation requirements for flat-size Bound Printed Matter under M950 to read as follows:]

4.0 BOUND PRINTED MATTER

4.1 Basic Standards

Mailers may choose to co-package flat-size Presorted rate pieces qualifying for and claiming the barcoded discount and Presorted rate pieces as an option to the basic packaging requirements in M722 and M820, subject to the following conditions:

a. The pieces in the Presorted rate mailing qualifying for and claiming the barcoded discount and the pieces in the

Presorted rate mailing must be part of the same mailing job and must be reported on the same postage statement.

b. The pieces in the mailing job must be flat-size and meet any other size and mailpiece design requirements applicable to the rate category for which they are prepared.

c. Co-packaged pieces must be co-sacked under M910.

d. A separate minimum of 300 Presorted rate pieces qualifying for and claiming the barcoded discount and a separate minimum of 300 Presorted rate pieces are required. The combined total number of pieces qualifying for and claiming the barcoded discount and the Presorted rate must be used to meet the minimum volume requirements for packages and sacks.

e. Presorted rate pieces must contain a 5-digit barcode and be co-packaged with Presorted rate pieces qualifying for and claiming the barcoded discount for the same presort destination. If this optional preparation method is used, all barcoded discount pieces and Presorted rate pieces in the same mailing job and reported on the same postage statement must be co-packaged.

f. All pieces must meet the AFSM 100 requirements in C820.

g. Unless presented using an approved manifest mailing system under P910, Presorted rate pieces qualifying for and claiming the barcoded discount and Presorted rate pieces for each presort destination must be sorted so that only one physical package for each logical presort destination includes both Presorted rate pieces qualifying for the barcoded discount (containing a ZIP+4 or delivery point barcode) and Presorted rate pieces (containing a 5-digit barcode).

4.2 Package Preparation

Preparation sequence, package size, and labeling:

a. 5-digit scheme (optional); minimum 10 addressed pieces or 10 pounds, maximum package weight 20 pounds; optional endorsement line (OEL) required.

b. 5-digit (required); minimum 10 addressed pieces or 10 pounds, maximum package weight 20 pounds; red Label D or optional endorsement line (OEL).

c. 3-digit (required); minimum 10 addressed pieces or 10 pounds, maximum package weight 20 pounds; green Label 3 or OEL.

d. ADC (required); minimum 10 addressed pieces or 10 pounds, maximum package weight 20 pounds; pink Label A or OEL.

e. Mixed ADC (required); no minimum, maximum package weight 20 pounds; tan Label MXD or OEL.

* * * * *

An appropriate amendment to 39 CFR 111 to reflect these changes will be published.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 03-7337 Filed 3-27-03; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA202-4400a; FRL-7474-2]

Approval and Promulgation of Air Quality Implementation Plans; Philadelphia County, PA; Construction, Modification and Operation Permit Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Philadelphia County portion of the Pennsylvania State Implementation Plan (SIP). The revision approves Philadelphia County's regulations governing the construction of new and modified sources and the operation of existing sources of air pollution in the County. EPA is approving this SIP revision in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on May 27, 2003 without further notice, unless EPA receives adverse written comment by April 28, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to Makeba Morris, Chief, Permitting and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental

Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, Pennsylvania 19104.

FOR FURTHER INFORMATION CONTACT: Paul Arnold, (215) 814-2194, or by e-mail at arnold.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 13, 1999, the Commonwealth of Pennsylvania submitted on behalf of Philadelphia County Air Management Services (AMS) a formal revision to its State Implementation Plan (SIP). The SIP revision consists of Philadelphia Air Management Regulation XIII—“Pertaining to the Construction, Modification, Reactivation, and Operation of Sources.”

II. Summary of SIP Revision

Regulation XIII enables Philadelphia County AMS to administer the permit program requirements contained in the Commonwealth of Pennsylvania's 25 Pa. Code Chapter 127, “Construction, Modification, Reactivation, and Operation of Sources.” Substantively, Regulation XIII incorporates by reference 25 Pa. Code Chapter 127 in its entirety. Philadelphia County made minor administrative revisions to 25 Pa. Code Chapter 127 to reflect the appropriate officials and administrative procedures relevant to AMS.

Regulation XIII, through incorporation of the various subchapters of 25 Pa. Code Chapter 127, adopts provisions that pertain to a number of distinct permit programs that satisfy a variety of Clean Air Act requirements. Each of the permit program elements contained in 25 Pa. Code Chapter 127 have been previously submitted to EPA for review and approval as part of the SIP for the Commonwealth of Pennsylvania. Since Philadelphia County did not make any substantive changes to 25 Pa. Code Chapter 127 when it incorporated its provisions into its Regulation XIII, the review and analysis performed by EPA when it previously acted on 25 Pa. Code Chapter 127 remains relevant and appropriate. The following table indicates the relevant subchapters of 25 Pa. Code Chapter 127 that have been previously approved by EPA as part of the Pennsylvania SIP.

PREVIOUS EPA SIP ACTION ON 25 PA. CODE CHAPTER 127

25 Pa. Code Chapter 127 Subchapter	Approval date
A. General provisions pertaining to permit program purpose and operational flexibility	July 30, 1996. 61 FR 39597.
B. Plan approval requirements related to construction or modification of minor sources	July 30, 1996. 61 FR 39597.
F. Operating permit requirements related to the ongoing operation of minor and major sources	July 30, 1996. 61 FR 39597.
H. General plan approval and operating permit provisions pertaining to permits for groups or categories of sources	July 30, 1996. 61 FR 39594.
I. Plan approval and operating permit fee provisions	July 30, 1996. 61 FR 39594.
J. General conformity provisions of the Clean Air Act	Sept. 29, 1997. 62 FR 50870.

EPA directs interested parties to review the rulemaking actions detailed above for further analysis in support of this action to approve Regulation XIII as part of Philadelphia County's portion of the Pennsylvania SIP.

Regulation XIII also contains provisions that enable Philadelphia County to implement and enforce the federal prevention of significant deterioration (PSD) of air quality permit program. The PSD program covers any new construction or any major modification of a major stationary air emission source in an area which has air quality better than the national ambient air quality standards. The program requires the issuance of permits prior to construction or modification of certain sources. Regulation XIII adopts the requirements of the Federal PSD program at 40 CFR 52.21 by reference in its entirety. Because Regulation XIII does not reference a specific edition of 40 CFR part 52, all future changes to part 52 with regard to the federal PSD program are automatically incorporated by reference into Regulation XIII.

The Federal PSD program promulgated at 40 CFR part 52 intrinsically meets the minimum requirements of 40 CFR part 51 pertaining to the adoption and implementation of PSD permit programs by state and local air pollution control agencies. Therefore, Regulation XIII, by incorporating the Federal PSD program, meets the minimum requirements of 40 CFR part 51 with regard to PSD programs.

Since 1983, Philadelphia County AMS has been delegated the authority to implement and enforce the provisions of 40 CFR 52.21 on behalf of EPA. (See 48 FR 31638, July 11, 1983.) Incorporation of the Federal PSD regulations into Regulation XIII and approval into the Philadelphia County portion of the Pennsylvania SIP effectively eliminates the need for the existing PSD delegation agreement. Upon the effective date of this action, the existing delegation of

authority agreement between EPA and Philadelphia County regarding implementation and enforcement of the Federal PSD program will be terminated.

In addition, while EPA is approving Philadelphia County's PSD SIP, EPA recognizes that it has a responsibility to insure that all States properly implement their preconstruction permitting programs. EPA's approval of Philadelphia County's PSD program does not divest the Agency of the duty to continue appropriate oversight to insure that PSD determinations made by Philadelphia County are consistent with the requirements of the Clean Air Act, EPA regulations, and the SIP. EPA's authority to oversee PSD program implementation is set forth in sections 113, 167, and 505(b) of the Act. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not "conform to the requirements of" the PSD program. Similarly, section 113(a)(5) provides for administrative orders and civil actions whenever EPA finds that a State "is not acting in compliance with" any requirement or prohibition of the Act regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.

It should be noted that EPA is not taking action at this time on certain discrete portions of Regulation XIII. Regulation XIII contains provisions that pertain to the County's new source review (NSR) permitting program for the construction or modification of major sources in nonattainment areas. Similarly, Regulation XIII contains provisions that reflect the requirements of the County's operating permit

program developed to satisfy title V of the Clean Air Act. The NSR and title V provisions of Regulation XIII may be considered separate and/or additional permitting requirements relative to the other permitting requirements contained in the Regulation XIII. The EPA's inaction on these provisions at this time does not adversely impact the implementation of the portions of Regulation XIII that are being approved as part of the Philadelphia County portion of the Pennsylvania SIP pursuant to this action. The EPA intends to take separate action on the NSR and title V operating permit program portions of Regulation XIII in the future.

III. Final Action

EPA is approving Philadelphia Air Management Regulation XIII of the AMS regulations pertaining to a number of the County's construction and operating permit programs. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment because this rulemaking incorporates the requirements contained in Commonwealth of Pennsylvania's 25 Pa. Code Chapter 127, which was previously reviewed and approved by EPA. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on May 27, 2003 without further notice unless EPA receives adverse comment by April 28, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties

interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA’s role is to approve state choices,

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 27, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Philadelphia County’s Air Management Regulation XIII may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 20, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(203) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(203) Revisions to Philadelphia Air Management Regulation XIII—“Pertaining to the Construction, Modification, Reactivation, and Operation of Sources” submitted on May 13, 1999 by the Pennsylvania Department of Environmental Protection on behalf of Philadelphia County Air Management Services:

(i) Incorporation by reference.

(A) Letter of May 13, 1999 from the Pennsylvania Department of Environmental Protection on behalf of Philadelphia County Air Management Services transmitting Regulation XIII governing the construction of new and modified sources and operation of existing sources of air pollution in the County.

(B) Philadelphia Air Management Regulation XIII—“Pertaining to the Construction, Modification, Reactivation, and Operation of Sources”, except as it pertains to the new source review permit program and the title V operating permit program, effective October 30, 1995.

(ii) Additional Material.—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(203)(i) of this section.

[FR Doc. 03–7510 Filed 3–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPT–2002–0060; FRL–6758–7]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 62 chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by this rule as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs to prevent any unreasonable risk of injury to human health or the environment. EPA is promulgating this SNUR using direct final procedures.

DATES: The effective date of this rule is May 27, 2003 without further notice, unless EPA receives adverse comment or notice of intent to submit adverse comment before April 28, 2003. This rule shall be promulgated for purposes of judicial review at 1 p.m. (e.s.t.) on April 11, 2003.

If EPA receives adverse comment or notice before April 28, 2003 that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR before the effective date for the substance for which the comment or notice of intent to comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Comments or notice of intent to submit adverse or critical comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8974; e-mail address: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers (NAICS 325), e.g., Manufacturers, importers, processors, and users of chemicals.
- Petroleum and coal product industries (NAICS 324), e.g., Manufacturers, importers, processors, and users of chemicals.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in title 40 of the Code of Federal Regulations (CFR) at 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT-2002-0060. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA

Docket Center Reading Room telephone number is (202) 566-1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566-0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. The OPPTS harmonized test guidelines referenced in this document are available at <http://www.epa.gov/opptsfrs/home/guidelin.htm>. A frequently updated electronic version of 40 CFR part 721 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml/00/Title_40/40cfr/721_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper,

will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that

is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT-2002-0060. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT-2002-0060. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT-2002-0060. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930.

D. How Should I Submit CBI To The Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket

or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI.

Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the rule.
7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing, importing, or processing a substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5 (h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to this Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned for non-confidential chemical identities), basis for the action taken by EPA in the TSCA section 5(e) consent order or as a non-section 5(e) SNUR for the substance (including the statutory citation and specific finding), toxicity concern, and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of this document by reference to 40 CFR part 721, subpart E where the significant new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII.

Where the underlying TSCA section 5(e) consent order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI., the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice (SNUN) at least 90 days in advance. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the TSCA section 5(e) consent order. Descriptions

of recommended tests are provided for informational purposes.

Data on potential exposures or releases of the substances, testing other than that specified in the TSCA section 5(e) consent order for the substances, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. Persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs, as stated in 40 CFR 721.1(c), including submission of test data on health and environmental effects as described in 40 CFR 720.50.

EPA is not publishing SNURs for PMNs for P-99-309, P-99-492/493/494/495/496/497, P-99-847, P-99-1106, P-99-1166, and P-99-1389, which are subject to a final TSCA section 5(e) consent order. The TSCA section 5(e) consent orders for these substances are derived from an exposure finding based solely on substantial production volume and significant or substantial human exposure and/or release to the environment of substantial quantities. For these cases there were limited or no toxicity data available for the PMN substances. In such cases, EPA regulates the new chemical substances under TSCA section 5(e) by requiring certain toxicity tests. For instance, chemical substances with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects. However, for these substances, the short-term toxicity testing required by the TSCA section 5(e) consent order is usually completed within 1 to 2 years of notice of commencement (NOC). EPA's experience with exposure-based SNURs requiring short-term testing is that the SNUR is often revoked within 1 to 2 years when the test results are received. Rather than issue and revoke SNURs in such a short span of time, EPA will defer publication of exposure-based SNURs until either a NOC or data demonstrating risk are received unless the toxicity testing required is long-term. EPA is issuing this explanation and notification as required in 40 CFR 721.160(a)(2) as it has determined that SNURs are not needed at this time for these substances which are subject to a final section 5(e) consent order under TSCA.

PMN Numbers P-98-0082/0083/0084

Chemical names: (generic) (P-98-0082 and P-98-0083) Alkoxyolated alkylpolyol acrylates, adduct with alkylamine and (generic) (P-98-0084) Alkoxyolated alkylpolyol acrylates.

CAS numbers: Not available.

Basis for action: The PMN substances will be used as binders for UV or electron beam curable coatings for wood, paper, and plastics. Based on structural analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 part per billion (ppb) of the PMN substances in surface waters. Since significant environmental exposure is not expected, as the substances are not released to surface waters, as described in the PMNs, EPA has not determined that the proposed manufacturing, processing, and use of the substances may present an unreasonable risk. EPA has determined, however, that other uses of the substances resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substances. All tests should be conducted with the static methods and nominal concentrations.

CFR citation: 40 CFR 721.465.

PMN Numbers P-98-0497 and P-98-0509

Chemical name: Propanoic acid, 2-methyl-, (1R,2R,4R)-1,7,7-trimethylbicyclo[2.2.1]hept-2-yl ester, rel-.

CAS number: 85586-67-0.

Basis for action: The PMN substances will be used as a fragrance compound for air fresheners, soaps, shampoo, household detergents, and bleach. Toxicity data on structurally similar esters indicate that the PMN substances may cause toxicity to aquatic organisms. Based on these data, EPA is concerned that toxicity to aquatic organisms may occur at a concentration of 10 ppb of the PMN substances in surface waters. Since significant environmental exposure is not expected as the PMN substances are not released to surface waters in significant quantities, EPA has not determined that the proposed processing and use of the substances may present an unreasonable risk. EPA

has determined, however, that an increase in production volume may result in releases of the PMN substances to surface waters which may cause significant adverse environmental effects. Based on this information the PMN substances meet the concern criteria at § 721.170 (b)(4)(ii).

Recommended testing: The Agency has determined that an algal toxicity study (OPPTS 850.5400 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)) would help to characterize possible environmental effects of the substances. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations.

CFR citation: 40 CFR 721.4486.

PMN Number P-98-0823

Chemical name: Dodecanoic acid, 12-amino-.

CAS number: 693-57-2.

Effective date of section 5(e) consent order: August 18, 2000.

Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.

Toxicity concern: This PMN substance will be used as a raw material for Nylon-12. EPA has identified a health concern for carcinogenicity via inhalation exposure based on analogy to 11-aminoundodecanoic acid which caused neoplastic nodules in the liver and transitional cell carcinomas in the urinary bladder of male rats.

Recommended testing: EPA has determined that a carcinogenicity study (OPPTS 870.4200 test guideline) would help to characterize the human health effects.

CFR citation: 40 CFR 721.2584.

PMN Number P-98-1125

Chemical name: (generic) Fatty acid, reaction product with substituted oxirane, formaldehyde-phenol polymer glycidyl ether, substituted propylamine and polyethylenepolyamines.

CAS number: Not available.

Basis for action: The PMN substance will be used as a curing agent for epoxy coating systems. Based on structural analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected

as the PMN substance is not released to surface water above 10 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters above 10 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)); a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), an algal toxicity study (OPPTS 850.5400 test guideline (public draft)), and a fish acute toxicity mitigated by humic acid ('HA') of 10 and 20 mg HA per liter diluent would help to characterize the environmental effects of the PMN substance. All studies should use the static methods and nominal concentrations.

CFR citation: 40 CFR 721.6181.

PMN Number P-98-1262

Chemical name: (generic) Reaction product of alkylene diamine, MD1, substituted carbomonocyclic amine and alkylamine.

CAS number: Not available.

Basis for action: The PMN substance will be used as described in the PMN. Based on test data on structurally similar neutral organic chemicals, the PMN substance may cause toxicity to aquatic organisms. Based on the data, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of the following testing would help characterize the environmental effects of the PMN substance: a Melting point (OPPTS 830.7200 test guideline), a fish early-life stage toxicity test (OPPTS 850.1400 test guideline (public draft)), and a daphnid chronic toxicity test

(OPPTS 850.1300 test guideline (public draft)). The fish and daphnid tests should be conducted with the flow-through methods and measured concentrations, and hardness of dilution water less than 180 mg/L as CaCO₃.
CFR citation: 40 CFR 721.2582.

PMN Number P-99-0044

Chemical name: Formaldehyde, polymer with phenol and 1,2,3-propanetriol, methylated.
CAS number: 209810-57-1.

Basis for action: The PMN substance will be used as a bonding agent for mineral aggregates. Based on structural analogy to phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 3 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface water above 3 ppb may cause adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that an activated sludge sorption isotherm test (OPPTS 835.1110 test guideline), a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance. The fish and daphnid tests should be performed under flow through methods and measured concentrations. The algal test should be performed under static methods and measured concentrations.
CFR citation: 40 CFR 721.3807.

PMN Number P-99-0510

Chemical name: (generic) Hexamethylenediamine adduct of substituted piperidinyloxy.
CAS number: Not available.

Effective date of section 5(e) consent order: December 24, 1999.

Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii)(i) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Based on submitted data on a 28-day subchronic study in rats, the PMN substance has been shown

to cause potential liver toxicity, hemolytic effects, and immunotoxicity from inhalation exposure to the PMN substance.

Recommended testing: A 90-day subchronic oral study in rats with emphasis on hematology, the immune system, and male reproductive system (OPPTS 870.3100 test guideline) would help to characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing the 90-day subchronic oral study.
CFR citation: 40 CFR 721.6205.

PMN Number P-99-0669

Chemical name: Oxirane, methyl-, polymer with oxirane, mono(3,5,5-trimethylhexyl) ether.
CAS number: 204336-40-3.

Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to nonionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration of 600 ppb in surface waters. Since significant environmental exposure is unlikely, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substances. The fish and daphnid tests should be conducted with the flow-through methods and measured concentrations, and the algal test should be conducted with static methods and measured concentrations.
CFR citation: 40 CFR 721.522.

PMN Number P-99-0848

Chemical name: (generic) Alkenyl carboxylate, metal salt.
CAS number: Not available.

Effective date of section 5(e) consent order: August 2, 2000.

Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii)(I) of TSCA based on a finding that this substance is expected to enter the

environment in substantial quantities and may present an unreasonable risk of injury to the environment.

Toxicity concern: Based on analogy to anionic surfactants the PMN substance may be toxic to aquatic organisms at concentrations as low as 1 ppb.

Recommended testing: EPA has determined that an algal toxicity study (OPPTS 850.5400 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations and hardness of dilution water with less than 180 mg/L as CaCO₃. The algal test should be conducted with static methods and measured concentrations. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.2093.

PMN Number P-99-0873

Chemical name: (generic) Propanetriol polyalkylenepolyolamine aryl aldimine.
CAS number: Not available.

Basis for action: The PMN substance will be used as a binder for industrial coating. Based on additional information and structural analogy to schiff bases and aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the substance is not released to surface waters, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that an algal toxicity study (OPPTS 850.5400 test guideline (public draft)), a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with the flow-through methods and measured concentrations and the algal test should be conducted with static methods and measured concentrations.

CFR citation: 40 CFR 721.910.

PMN Number P-99-0874

Chemical name: (generic) Modified polymer of vinyl acetate and quaternary ammonium compound.

CAS number: Not available.

Basis for action: The PMN substance will be used as a modified polyvinyl alcohol. Based on submitted toxicity data for other high molecular weight, water swellable polymers, EPA has identified health concerns for inhalation exposure. Since significant inhalation exposure is unlikely when the substance is used as identified in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture of the PMN may lead to inhalation exposure which could cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that a 90-day inhalation toxicity study with a 60-day holding period (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance. Attention should be given to the lungs, including histopathology of the lungs (inflammation, epithelial hyperplasia, and fibrosis), bronchoalveolar lavage (BAL) analysis for markers of lung injury, and lung burden analysis for clearance of the test material (EPA-748-R-96-001). The neurotoxicity components and examination of organs other than the lungs are not required.

CFR citation: 40 CFR 721.8658.

PMN Number P-99-0965

Chemical name: Furan, octafluorotetrahydro-

CAS number: 773-14-8.

Basis for action: The PMN substance will be used as heat transfer agent. EPA believes that other uses of the PMN substance are likely and they have the potential for more widespread environmental exposure causing potential atmospheric changes. EPA is concerned that such atmospheric changes may contribute to global warming. Since significant environmental exposure is unlikely, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance may result in significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that infrared absorption, destruction of OH by radical and rate of production of HF for global warming would help to characterize the atmospheric effects of the PMN substance.

CFR citation: 40 CFR 721.3818.

PMN Number P-99-0990

Chemical name: Cobaltate (5-), bis[4-[[6-[[4-amino-6-chloro-1,3,5-triazin-2-yl)amio]-1-hydroxy-3-sulfo-2-naphthalenyl]azo]-3-hydroxy-7-nitro-1-naphthalenesulfonato(4-)]-, pentasodium.

CAS number: 91144-26-2.

Basis for action: Based on structural analogues and submitted test data, EPA has identified health concerns for carcinogenicity and mutagenicity from inhalation exposure to the PMN substance. Since significant worker exposure is unlikely because inhalation exposure is not expected when the substance is used with protective equipment as identified in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that uses of the substance other than as described in the PMN may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(B) and (b)(1)(i)(C).

Recommended testing: EPA has determined that a combined chronic toxicity/carcinogenicity study (OPPTS 870.4300 test guideline) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.5283.

PMN Number P-99-1167

Chemical name: L-aspartic acid, N,N'-[[1(E) - 1,2 - ethenediyl]bis[[3-sulfo-4, 1-phenylene)imino[6-(phenylamino)-1,3,5-triazine-4,2 - diyl]]]bis-, hexasodium salt.

CAS number: 205764-98-3.

Basis for action: The PMN substance will be used as a fluorescent whitener for coated paper. Based on submitted test data, EPA has identified concerns for liver effects. Since significant worker exposure is unlikely because there would not be significant inhalation exposure for the use identified in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance as described in the PMN present an unreasonable risk. EPA has determined, however, that uses of the substance in a powder form or domestic manufacture may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(i).

Recommended testing: EPA has determined that a 90-day subchronic oral toxicity study in rodents (OPPTS 870.3100 test guideline) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.4575.

PMN Number P-99-1189

Chemical name: 2-propenoic acid, 2-methyl-, C₁₁₋₁₄-isoalkyl esters, C₁₃-rich.

CAS number: 85736-97-6.

Basis for action: The PMN substance will be used as a monomer for casting automotive parts adhesives or as an impregnation fluid. Based on analogy to structurally similar methacrylates and esters, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the substance is not released to surface waters above 1 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters above 1 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: The Agency has determined that the results of the following testing would help to characterize possible environmental effects of the substance: A ready biodegradability test (OPPTS 835.3110 test guideline); a fish early-life stage toxicity study (OPPTS 850.1400 test guideline (public draft)); a mysid chronic toxicity study (OPPTS 850.1350 test guideline (public draft)) for 21 days, flow-through methods and measured concentrations; and a saltwater algal toxicity study, tiers I and II (OPPTS 850.5400 test guideline (public draft)) with the static methods and measured concentrations.

CFR citation: 40 CFR 721.4792.

PMN Numbers P-99-1191 and P-99-1192

Chemical name: (generic) Rare earth phosphate.

CAS number: Not available.

Basis for action: The PMN substances will be used as phosphors. Based on structural analogy to soluble salts and test data for inorganic phosphates, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substances in surface waters. Since significant environmental exposure is not expected, as the substances are not released to

surface waters above 10 ppb, as described in the PMNs, EPA has not determined that the proposed manufacturing, processing, and use of the substances may present an unreasonable risk. EPA has determined, however, that other uses of the substances resulting in release to surface waters above 10 ppb may cause significant adverse environmental effects. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(4)(ii). *Recommended testing:* EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substances. A flow-through method with measured concentrations of the rare earth metal is recommended for the fish and daphnid study and the static method with measured concentrations for green algae. In addition, the test dilution water and/or test medium should have a measured hardness of less than 180.0 mg/L as CaCO₃ and a total organic carbon (TOC) concentration of less than 2.0 mg TOC/L.

CFR citation: 40 CFR 721.6005.

PMN Number P-99-1287

Chemical name: (generic)

Alkylaminated polyolefin.

CAS number: Not available.

Basis for action: The PMN substance will be used as a gasoline fuel additive. Based on structural analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 40 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to

characterize the environmental effects of the PMN substance. These tests should be conducted with static methods and nominal concentrations, total organic carbon TOC of dilution water < 2.0 mg TOC/L, hardness of dilution water < 180.0 mg/L as CaCO₃, and stock solution adjusted to pH 7.0 with HCl.

CFR citation: 40 CFR 721.6178.

PMN Number P-99-1327

Chemical name: Propane, 1,1,1,3,3-pentachloro-

CAS number: 23153-23-3.

Basis for action: The PMN substance will be used as an intermediate for hydrofluorocarbon production. Based on submitted test data, EPA has identified health concerns for carcinogenicity, liver and kidney toxicity. Based on submitted data on hexachloropropane, concern for immunotoxicity was identified. Also, the Agency identified concern for neurotoxicity, reproductive toxicity in males and females, and concern for irritation and lesions in nasal passages and respiratory passages based on test data on other structural analogues. Since significant worker exposure is unlikely when the substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN could result in exposures which may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(A), (b)(3)(i), and (b)(3)(ii).

Recommended testing: EPA has determined that a prenatal developmental toxicity study (OPPTS 870.3700 test guideline), carcinogenicity study (OPPTS 870.4200 test guideline), and a reproduction fertility effects study (OPPTS 870.3800 test guideline) by the inhalation route will help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.533.

PMN Number P-99-1346

Chemical name: Silane, triethoxy

(3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyl)-

CAS number: 51851-37-7.

Basis for action: The PMN substance will be used as in anti-graffiti coatings as described in the PMN. Based on structural analogy to alkoxysilanes, EPA has identified health concerns for lung toxicity. Since significant worker exposure is unlikely, when the substance is used with protective equipment as described in the PMN,

EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN could result in exposures which may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that a 90-day subchronic inhalation toxicity study in rats (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.9504.

PMN Number P-99-1366

Chemical name: (generic) 4,6-Disubstituted pyrimidine.

CAS number: Not available.

Basis for action: The PMN substance will be used as a starting material for synthesis of a chemical intermediate. EPA has identified health concerns for neurotoxicity and immunotoxicity (effects to the spleen) based on test data on an analogous substance, concerns for carcinogenicity and developmental toxicity based on the potential for the PMN substance to act as an arylating agent or as an antimetabolite. Since significant worker exposure is unlikely, when the substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture could result in exposures which may cause serious chronic and developmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(1)(i)(C).

Recommended testing: EPA has determined that a 90-day subchronic oral toxicity study in rodents (OPPTS 870.3100 test guideline) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.8920.

PMN Number P-99-1399

Chemical name: (generic) Aromatic epoxide resin.

CAS number: Not available.

Basis for action: The PMN substance will be used as a thermoset resin. EPA has identified health concerns for mutagenicity, carcinogenicity, developmental toxicity, male reproductive effects, liver and kidney toxicity based on the epoxide groups. Since significant worker exposure is unlikely, when the substance is used as described in the PMN, EPA has not determined that the proposed

manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that a 90-day subchronic oral toxicity study in rodents with attention to pathology of the reproductive organs (OPPTS 870.3100 test guideline), a reproduction fertility effects study (OPPTS 870.3800 test guideline), and a combined chronic toxicity/carcinogenicity study (OPPTS 870.4300 test guideline) would help to characterize the health effects of the substance.

CFR citation: 40 CFR 721.2673.

PMN Number P-00-0045

Chemical name: (generic) Benzenediazonium, [(((substituted) azo)phenyl)sulfonyl]amino]-, coupled with aminophenol, diazotized aminobenzoic acid, diazotized (substituted) benzenesulfonic acid and naphthalenol.

CAS number: Not available.

Basis for action: The PMN substance will be used as described in the PMN. Based on submitted test data, EPA has identified health concerns for methemoglobinemia. Since significant worker exposure is unlikely when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may cause significant adverse effects. EPA has determined, however, that domestic manufacture may result in serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that a 90-day subchronic oral toxicity study in rodents (OPPTS 870.3100 test guideline) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.5286.

PMN Number P-00-0067

Chemical name: (generic) Alkyl heteropolycyclic-aniline.

CAS number: Not available.

Basis for action: The PMN substance will be used as an industrial intermediate. Based on test data and on structural analogy to anilines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the substance is not released to

surface water above 1 ppb as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface above 1 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that a daphnid chronic toxicity test (OPPTS 850.1300 test guideline (public draft)), a fish early-life stage toxicity test (OPPTS 850.1400 test guideline (public draft)) conducted with flow-through methods and measured concentrations, dilution water hardness < 180.0 mg/L as CaCO₃, and a Porous Pot (OPPTS 835.3220 test guideline) would help to characterize the environmental effects.

CFR citation: 40 CFR 721.4136.

PMN Number P-00-0094

Chemical name: (generic) Salt of a substituted sulfonated aryl azo compound.

CAS number: Not available.

Basis for action: The PMN substance will be used as a colorant for coating compositions. EPA has identified health concerns for testicular effects, blood effects, and liver toxicity based on submitted test data. Since significant worker exposure is unlikely, when the substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined however, that domestic manufacture could result in exposures which may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(i).

Recommended testing: EPA has determined that a 90-day subchronic oral toxicity study in rodents (OPPTS 870.3100 test guideline) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.9597.

PMN Number P-00-0108

Chemical name: (generic) Alkoxyamino-alkyl-coumarin.

CAS number: Not available.

Basis for action: The PMN substance will be used as a chemical tracer. Based on structural analogy to coumarins, EPA has identified health concerns for developmental toxicity and carcinogenicity. Since significant worker exposure is unlikely when the substance is used as described in the

PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture could result in exposures which may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(1)(i)(C).

Recommended testing: EPA has determined that a 90-day subchronic oral study in rodents (OPPTS 870.3100 test guideline) and a prenatal developmental toxicity study (OPPTS 870.3700 test guideline) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.2155.

PMN Number P-00-0202

Chemical name: (generic) Reaction product of substituted aromatic diol, formaldehyde and alkanolamine, propoxylated.

CAS number: Not available.

Basis for action: The PMN substance will be used as foam insulation. Based on structural analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface water may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. All tests should be conducted with static methods and nominal concentrations, dilution water total organic carbon TOC < 2.0 mg TOC/L dilution water hardness < 180.0 mg/L as CaCO₃, and stock solution adjusted to pH 7.0.

CFR citation: 40 CFR 721.8085.

PMN Number P-00-0330

Chemical name: Oxirane, [((1R,2S,5R)-5-methyl-2-(1-methylethyl)cyclohexyl)oxy]methyl]-.

CAS number: 249297-16-3.

Basis for action: The PMN substance will be used as a chemical intermediate. Based on data for monoepoxides, EPA has identified health concerns for mutagenicity, carcinogenicity, male reproductive toxicity, developmental toxicity, and liver and kidney toxicity for the epoxide. Also, based on analogy to epoxides, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 30 ppb of the PMN substance in surface waters. Since significant worker and environmental exposure is unlikely when the substance is used as described in the PMN, EPA has not determined that the manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as an intermediate could result in exposures which may cause serious health effects and significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii), (b)(1)(i) (C), and (b)(4)(ii).

Recommended testing: EPA has determined that a 90-day subchronic oral toxicity study in rodents (OPPTS 870.3100 test guideline), with attention to pathology of the reproductive organs, and a carcinogenicity study (OPPTS 870.4200 test guideline) would help to characterize the health effects of the substance. In addition, the following acute aquatic toxicity tests would help to characterize the environmental effects. A fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)). The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations.

CFR citation: 40 CFR 721.5590.

PMN Numbers P-00-0333 and P-00-0334

Chemical name: (generic) Salt of an acrylate copolymer.

CAS number: Not available.

Basis for action: The PMN substances will be used as an additive. EPA has identified concerns for lung toxicity and lung tumors based on data on certain high molecular weight polymers. Since significant worker exposure is unlikely as inhalation exposure is not expected for the uses described in the PMNs, EPA has not determined that the proposed manufacturing, processing, and use of the substances may present an

unreasonable risk. EPA has determined, however, that uses of the substances in a solid form may cause serious health effects. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that a 90-day inhalation toxicity study with a 60-day holding period (OPPTS 870.3465 test guideline) would help characterize the human health effects of the PMN substance. Attention should be given to the lungs, including histopathology of the lungs (inflammation, epithelial hyperplasia, and fibrosis), bronchoalveolar lavage (BAL) analysis for markers of lung injury, and lung burden analysis for clearance of the test material (EPA-748-R-96-001). The neurotoxicity components and examination of organs other than the lungs are not required.

CFR citation: 40 CFR 721.338.

PMN Number P-00-0351

Chemical name: (generic) Amino-hydroxy sulfonaphthylazo-disubstituted phenyl azo benzene carboxylate salt.

CAS number: Not available.

Basis for action: The PMN substance will be used as described in the PMN. Based on submitted data on a 28-day study in rats with a no observed adverse effect level (NOAEL) of 25 mg/kg/day, EPA has identified concerns for liver and kidney effects. Additionally, based on analogy of the azo reduction product of the PMN substance, EPA has concerns for carcinogenicity, developmental toxicity, and immunotoxicity. Since significant worker exposure is unlikely as inhalation exposure is not expected for the use described in the PMN, EPA has not determined that manufacturing, processing, and use of the substance as described in the PMN may present an unreasonable risk. EPA has determined, however, that use of the substance as a solid may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii), (b)(3)(iii), and (b)(1)(i)(D).

Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in two species (OPPTS 870.3700 test guideline) and an Ames assay with the Prival modification and a concurrent positive control (OPPTS 870.5100 test guideline) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.984.

PMN Number P-00-0353

Chemical name: (generic) Alkoxyated aliphatic diisocyanate allyl ether.

CAS number: Not available.

Basis for action: The PMN substance will be used as an additive for surface coatings and for plastics and plastic surfaces. Based on structural analogy to esters and allylic and vinyl ethers, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 9 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the PMN substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish chronic toxicity study (OPPTS 850.1400 test guideline (public draft)), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations, dilution water hardness less than 180.0 mg/L as CaCO₃. The algal test should be conducted with static methods and measured concentrations.

PMN Numbers P-00-0364 and P-00-0365

Chemical name: (generic) Copper complex of (substituted sulfonaphthyl azo substituted phenyl) disulfonaphthyl azo, amine salt.

CAS number: Not available.

Basis for action: The PMN substances will be used as described in the PMNs. Based on analogy to structurally similar substances, EPA has identified concerns for mutagenicity, carcinogenicity, and developmental toxicity. Since significant worker exposure is unlikely as inhalation exposure is not expected for the uses described in the PMNs, EPA has not determined that the proposed manufacturing, processing, and use of the substances may present an unreasonable risk. EPA has determined, however, that use of the substances as a powder may cause serious health effects. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(3)(ii) and (b)(1)(i)(C).

Recommended testing: EPA has determined that a prenatal

developmental toxicity study by the oral route in two species (OPPTS 870.3700 test guideline) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.2577.

PMN Number P-00-0420

Chemical name: (generic) Substituted phenylazophenylazo phenol.

CAS number: Not available.

Basis for action: The PMN substance will be used as a colorant. Based on structural analogy to phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface water may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations. Dilution water hardness less than 180.0 mg/L as CaCO₃.

CFR citation: 40 CFR 721.843

PMN Number P-00-0469

Chemical name: Glycine, N-(carboxymethyl)-N-dodecyl-, monosodium salt.

CAS number: 141321-68-8.

Basis for action: The PMN substance will be used as a surfactant. Based on structural analogy to alkyl amphoteric surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 30 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 30 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an

unreasonable environmental risk. EPA has determined, however, that other uses of the substance resulting in release to surface water above 30 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the following acute aquatic toxicity tests would help to characterize the environmental effects: a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)). The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations, dilution water total organic carbon TOC < 2.0 mg TOC/L dilution water hardness < 180.0 mg/L as CaCO₃, and stock solution adjusted to pH 7.0.

CFR citation: 40 CFR 721.3848.

PMN Number P-00-0490

Chemical name: (generic) Substituted acrylamides and acrylic acid copolymer.

CAS number: Not available.

Basis for action: The PMN substance will be used as a delivery substrate. EPA has identified concerns for lung toxicity and carcinogenicity if the substance is inhaled based on data for certain high molecular weight polymers. Since significant worker exposure is unlikely as inhalation exposure to worker is not expected for the use described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substances may present an unreasonable risk. EPA has determined, however, that domestic manufacture, or processing and use of the substance in a powder form may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(1)(i)(C).

Recommended testing: EPA has determined that a 90-day inhalation toxicity study with a 60-day holding period (OPPTS 870.3465 test guideline) would help characterize the human health effects of the PMN substance. Attention should be given to the lungs, including histopathology of the lungs (inflammation, epithelial hyperplasia, and fibrosis), bronchoalveolar lavage (BAL) analysis for markers of lung injury, and lung burden analysis for clearance of the test material (EPA-748-R-96-001). The neurotoxicity components and examination of organs other than the lungs are not required.

CFR citation: 40 CFR 721.321.

PMN Number P-00-0542

Chemical name: (generic) Substituted phenols and formaldehyde polymer, alkylated.

CAS number: Not available.

Basis for action: The PMN substance will be used as a resin for can and tube coatings. Based on structural analogy to polyphenol reaction products, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 4 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may prevent an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentration. The algal test should be conducted with static methods and measured concentration. Dilution water hardness < 180 mg/L as CaCO₃.

CFR citation: 40 CFR 721.3812.

PMN Number P-00-0559

Chemical name: (generic) Methylated-para-rosaniline salt of a trisulfonated triarylmethane dye.

CAS number: Not available.

Basis for action: The PMN substance will be used as a colorant for inks. EPA has identified health concerns for carcinogenicity and developmental toxicity based on analogy to gentian violet. Since significant worker exposure is unlikely when the substance is used as described in the PMN, EPA has not determined that the proposed processing and use of the substance may present an unreasonable risk. EPA has determined however, that domestic manufacturing could result in exposures which may cause serious health effects. Also, based on analogy to cationic dyes, EPA is also concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the

PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 2 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable environmental risk. EPA has determined, however, that other uses of the substance resulting in release to surface water above 2 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(ii), and (b)(4)(ii).

Recommended testing: EPA has determined that the following acute aquatic toxicity tests would help to characterize the environmental effects: a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)). The fish and daphnid tests should be conducted with flow-through methods and measured concentrations, dilution water total organic carbon TOC < 2.0 mg TOC/L. The algal test should be conducted with static methods and measured concentration. Dilution water hardness < 180.0 mg/L as CaCO₃. EPA has also determined that a prenatal developmental toxicity study by the oral route in two-species (OPPTS 870.3700 test guideline) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.9520.

PMN Number P-00-0618

Chemical name: (generic) Substituted hydroxyalkane acetate.

CAS number: Not available.

Basis for action: The PMN substance will be used as described in the PMN. EPA has concerns for liver toxicity, kidney toxicity, and developmental toxicity based on a 28-day subchronic inhalation study in rats and a developmental toxicity study in rats for an analog of the PMN material; EPA identified concerns for neurotoxicity and carcinogenicity based on analog data. Since significant worker exposure is unlikely as inhalation exposure is not expected for the use described in the PMN, EPA has not determined that manufacturing, processing, and use of the substance as described in the PMN may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN may cause serious health effects. Based on this information the PMN substance meets the concern criteria at

§ 721.170 (b)(3)(i), (b)(3)(ii), and (b)(1)(i)(C).

Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in two species (OPPTS 870.3700 test guideline) and a 90-day inhalation toxicity study with a 60-day holding period (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.532.

PMN Number P-00-0626

Chemical name: (generic) Acrylate of polymer based on isophorone diisocyanate.

CAS number: Not available.

Basis for action: The PMN substance will be used as an additive for inks and coatings. Based on structural analogy to acrylates, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 3 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable environmental risk. EPA has determined, however, that other uses of the substance resulting in release to surface water above 3 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the following acute aquatic toxicity tests would help to characterize the environmental effects: a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)). The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations. Dilution water hardness < 180.0 mg/L as CaCO₃.

CFR citation: 40 CFR 721.463.

PMN Number P-00-0637

Chemical name: Methylum, triphenyl-, tetrakis(pentafluorophenyl)borate (1-).

CAS number: 136040-19-2.

Basis for action: The use of the substance is as described in the PMN. Based on structural analogy to organoborates, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since

significant environmental exposure is not expected, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations. Dilution water hardness less than 180.0 mg/L as CaCO₃.

CFR citation: 40 CFR 721.5454.

PMN Number P-00-0638

Chemical name: (generic) Alkali metal salt of halogenated organoborate.

CAS number: Not available.

Basis for action: The use of the substance is as described in the PMN. Based on structural analogy to organoborates, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 3 ppb of the PMN substances in surface waters. Since significant environmental exposure is not expected, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and

daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations. Dilution water hardness less than 180.0 mg/L as CaCO₃.

CFR citation: 40 CFR 721.5452.

PMN Number P-00-0691

Chemical name: Amides, from ammonium hydroxide - maleic anhydride polymer and hydrogenated tallow alkyl amines, sodium salts, compds. with ethanolamine.
CAS number: 208408-03-1.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to anionic surfactants. EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 80 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 80 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, other uses of the substance resulting in release to surface waters above 80 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the following acute aquatic toxicity tests would help to characterize the environmental effects: a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)). The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations. Dilution water hardness < 180.0 mg/L as CaCO₃.

CFR citation: 40 CFR 721.6183.

PMN Number P-00-0698

Chemical name: (generic) Lithium salt of a sulfophenyl azo phenyl azo disulfostilbene.

CAS number: Not available.

Basis for action: The PMN substance will be used as described in the PMN. Based on analogy to structurally similar substance, EPA has identified concerns for liver toxicity, developmental toxicity, neurotoxicity, and blood toxicity for the aromatic amine azo reduction product. Since significant

worker exposure is unlikely as inhalation exposure is not expected for the uses described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance as a solid may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(iii).

Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in two species (OPPTS 870.3700 test guideline) and a 90-day subchronic oral toxicity study in rodents (OPPTS 870.3100 test guideline) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.9538.

PMN Number P-00-0738

Chemical name: Formaldehyde, reaction products with 1,3-benzenedimethanamine and bisphenol A.

CAS number: 259871-68-6.

Basis for action: The PMN substance will be used as coatings for railcars and marine vessels. Based on structural analogy to phenols and aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 20 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. These tests should be conducted with the static methods and nominal concentrations, dilution water total organic carbon TOC < 2.0 mg TOC/L dilution water hardness < 180.0 mg/L as CaCO₃, and stock solution adjusted to pH 7.0. EPA has also determined that an activated sludge

isotherm test (OPPTS 835.1110 test guideline) would help to characterize the environmental fate of the PMN substance.

CFR citation: 40 CFR 721.3805.

PMN Number P-00-0789

Chemical name: 1,4-Benedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, cyclized.

CAS number: 263244-54-8.

Basis for action: The PMN substance will be used as a curable thermoplastic resin. EPA has identified health and environmental concerns because the substance is potentially a persistent, bioaccumulative, and toxic (PBT) chemical, EPA estimates that the PMN substance will persist in the environment more than two months and estimates a bioaccumulation factor of greater than or equal to 1,000. Also based on structural analogy to esters, EPA expects toxicity to aquatic organisms at surface water concentrations as low as 9 ppb. Since significant environmental exposure is not expected as the substance is not released to surface waters, described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface water may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of the tiered testing as described in the New Chemicals Program's PBT Policy Statement (63 FR 60194; November 4, 1999) (FRL-6097-7) would help to characterize the properties of the substance. EPA has also determined that the following aquatic toxicity tests: a fish chronic toxicity study (OPPTS 850.1400 test guideline (public draft)), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations. Dilution water hardness < 180.0 mg/L as CaCO₃.
CFR citation: 40 CFR 721.990.

PMN Number P-00-0803

Chemical name: (generic) 2,7-Naphthalenedisulfonic acid, 5-[[4-chloro-6-[substituted] amino]-1,3,5-

triazin-2-yl]amino]-4-hydroxy-3-[(1-sulfo-2-naphthalenyl)azo]-, trisodium salt.

CAS number: Not available.

Basis for action: The PMN substance will be used as a textile dye. EPA has identified health concerns for mutagenicity and developmental toxicity based on one of the substituents on an azo reduction product. Since significant worker exposure is unlikely when the substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture could result in exposures which may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(iii).

Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in rats (OPPTS 870.3700 test guideline) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.5262.

PMN Number P-00-0806

Chemical name: 1,3,6-Naphthalenetrisulfonic acid, 7-[[2-[(aminocarbonyl)amino]-4-[[4-[[2-[2-(ethenylsulfonyl)ethoxy]ethyl]amino]-6-fluoro-1,3,5-triazin-2-yl]amino]phenyl]azo], trisodium salt.
CAS number: 106359-91-5.

Basis for action: The PMN substance will be used as a textile dye. Based on submitted test data, EPA has identified health concerns for mutagenicity, dermal sensitization and possible irreversible cornea staining; developmental toxicity and carcinogenicity based on one of the substituents on an azo reduction product. Since significant worker exposure is unlikely when the substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture could result in exposures which may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(i), (b)(1)(i)(D), and (b)(3)(iii).

Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in rats (OPPTS 870.3700 test guideline) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.5260.

PMN Number P-00-0816

Chemical name: (generic) Alkyl dialkylamino phenylsulfonyl alkenoate.
CAS number: Not available.

Basis for action: The PMN substance will be used as described in the PMN. Based on test data for structurally similar compounds, EPA has identified health concerns for kidney and liver toxicity. Since significant worker exposure is unlikely when the substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture could result in exposures which may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(i). Also, based on structural analogy to aliphatic amines, acrylates, and allylic and vinyl sulfones, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a 90-day subchronic oral study in rats (OPPTS 870.3100) would help characterize the human health effects of the PMN substance. Also the following aquatic toxicity test would help characterize the environmental effects of the PMN substance: a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)). The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations, dilution water total organic carbon TOC < 2.0 mg TOC/L dilution water hardness < 180.0 mg/L as CaCO₃.

CFR citation: 40 CFR 721.648.

PMN Number P-00-0827

Chemical name: 1-propanol, 3-propoxy-

CAS number: 4161-22-2.

Basis for action: The PMN substance will be used as described in the PMN. EPA has identified health concerns for liver toxicity based on submitted test data and neurotoxicity based on the solvent properties of the substance. Since significant worker exposure is unlikely, when the substance is used with protective equipment as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN including handling the material without the use of impervious gloves could result in exposures which may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(i) and (b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic oral study (OPPTS 870.3100 test guideline), and a prenatal developmental toxicity study (OPPTS 870.3700 test guideline) would help to characterize the health effects of the substance.

CFR citation: 40 CFR 721.525.

PMN Number P-00-0922

Chemical name: Borate(1-), tris(acetato-.kappa.O)hydro-, sodium, (T-4)-.
CAS number: 56553-60-7.

Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to other boron compounds, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 300 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 300 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface water above 300 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to

characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations. Dilution water hardness less than 180.0 mg/L as CaCO₃.

CFR citation: 40 CFR 721.1880.

PMN Number P-00-0993

Chemical name: (generic) Substituted 6,6'-(1-methylethylidene)bis[3,4-dihydro-3-phenyl-1,3-benzoxazine].
CAS number: Not available.

Basis for action: The PMN substance will be used as resin for structural composites and electronic laminates. EPA has identified health and environmental concerns because the substance is potentially a PBT chemical. Since significant environmental exposure is not expected, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of the tiered testing as described in the New Chemicals Program's PBT Category (63 FR 60194; November 4, 1999) would help to characterized the properties of the substance. EPA has also determined that the results of the following aquatic toxicity tests: a fish chronic toxicity study (OPPTS 850.1400 test guideline (public draft)), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)), would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations, dilution water hardness < 180.0 mg/L as CaCO₃. The algal test should be conducted with static methods and measured concentrations.
CFR citation: 40 CFR 721.1767

PMN Number P-00-1086

Chemical name: (generic) Silyl amine, potassium salt.

CAS number: Not available.

Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to aliphatic amines, EPA is concerned that toxicity

to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface waters as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations, dilution water total organic carbon TOC < 2.0 mg TOC/L dilution water hardness < 180.0 mg/L as CaCO₃.

CFR citation: 40 CFR 721.638.

PMN Number P-00-1087

Chemical name: (generic) Di-alkyl borane.

CAS number: Not available.

Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to organoborane compounds, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 200 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 200 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters above 200 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity

study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentration. The algal test should be conducted with static methods and measured concentration. Dilution water hardness < 180 mg/L as CaCO₃.
CFR citation: 40 CFR 721.1852.

PMN Number P-00-1089

Chemical name: (generic) Alkali metal alkyl borohydride.

CAS number: Not available.

Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to organoborane compounds, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 300 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the substance is not released to surface waters as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentration. The algal test should be conducted with static methods and measured concentration. Dilution water hardness < 180 mg/L as CaCO₃.
CFR citation: 40 CFR 721.1878.

PMN Number P-00-1132

Chemical name: (generic) Siloxanes and silicenes, aminoalkyl, fluoroethyl, hydroxy-terminated salt.

CAS number: Not available.

Basis for action: The PMN substance will be used in anti-graffiti systems as described in the PMN. Based on structural analogy to perfluoro alkyl polycationic polymers, EPA has identified health concerns for lung toxicity from inhalation exposure. Since

significant worker exposure is unlikely when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may cause significant adverse effects. EPA has determined, however, that use of the PMN substance other than as described in the PMN could result in exposures which may cause serious health effects. In addition, EPA has identified health concerns for potential incineration products for the PMN substance based on analogy to perfluorinated octane sulfonate (PFOS) and perfluorinated octanoic acid (PFOA). These incineration products are PBT. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that a 90-day inhalation toxicity study in rats with a 60-day holding period (OPPTS 870.3465 test guideline) would help characterize the human health effects of the PMN substance. Special attention should be given to histopathology (inflammation and cell proliferation) of the lung tissues and to various parameters of the bronchoalveolar lavage fluid (BALF), e.g., marker enzyme activities, total protein content, total cell count, cell differential, and cell viability. It is not necessary to look at internal organs. The Agency has also determined that the following tests would help characterize fate and ecotoxicity of the PMN substance: A Decomposition Kinetics by Thermogravimeter (ASTM E1641), a Compositional Analysis by Thermogravimeter (ASTM E1131), and a Laboratory "Burn" test - protocol to be agreed upon by EPA and the Company. The purpose of this test is to determine the disposition of the material and to identify degradates, especially the presence of components that can lead to the formation of perfluoro alkyl carboxylic acid after burning or incineration.

CFR citation: 40 CFR 721.9502.

PMN Number P-00-1195

Chemical name: Xanthylum, 9-(2-(ethoxycarbonyl)phenyl)-3,6-bis(ethylamino)-2,7-dimethyl-, ethyl sulfate.

CAS number: 26694-69-9.

Basis for action: The PMN substance will be used as a dye for complex basic dye pigment manufacture. Based on submitted test data for an analog, EPA has identified health concerns for toxic effects to the liver and heart. Since significant worker exposure is unlikely when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing,

and use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture or use of the PMN substance other than as an intermediate could result in serious health effects. Also, based on structural analogy to cationic dyes, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected when the PMN substance is used as described in the PMN, EPA has not determined that the proposed use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(4)(ii).

Recommended testing: EPA has determined that an acute oral toxicity study (40 CFR part 799.9110(d)(1)(i)(A)), a Salmonella typhimurium reverse mutation assay (OPPTS 870.5100 test guideline), a 28-day oral toxicity study Organization for Economic Cooperation and Development (OECD) guideline no. 407 or OPPTS 870.3050 test guideline), and an *in vivo* mammalian cytogenetics test by the intraperitoneal (i.p.) route: micronucleus assay (OPPTS 870.5395 test guideline) would help to characterize the human health effects of the PMN substance. EPA has also determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentration. The algal test should be conducted with static methods and measured concentration. Dilution water hardness < 180 mg/L as CaCO₃.
CFR citation: 40 CFR 721.2465.

PMN Number P-01-0432

Chemical name: (generic) Bis heterocyclic phenylene derivative.

CAS number: Not available.

Basis for action: The PMN substance will be used as a reactive modifier for polymeric substances. EPA has identified health concerns for neurotoxicity, developmental toxicity, mutagenicity, carcinogenicity, lung and liver toxicity, and sensitization based on test data. Since significant worker exposure is unlikely because there

would not be significant inhalation exposure for the use identified in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance as described in the PMN present an unreasonable risk. EPA has determined, however, that an increase in production volume over that described in the PMN could result in significant exposure to human health. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(1)(i)(A).

Recommended testing: EPA has determined that a mouse micronucleus test by the i.p. route (OPPTS 870.5395 test guideline) and a 28-day oral toxicity in rats OECD guideline number 407 or (OPPTS 870.3050) with a Functional Observational Battery (FOB) would help to characterize the health effects of the substance. If the above tests indicate a health concern, then the following tests may be necessary to qualify the potential health effects: a 90-day subchronic oral study in rats (OPPT 870.3100 test guideline), a prenatal development toxicity study by oral route in two species (OPPTS 870.3700 test guideline), a reproduction and fertility effects (OPPTS 870.3800 test guideline), and a carcinogenicity study (OPPTS 870.4200 test guideline).
CFR citation: 40 CFR 721.5925.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for 3 of the 62 substances, regulation was warranted under section 5(e) of TSCA, pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the substances. The basis for such findings is outlined in Unit III. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters; the SNUR provisions for these substances designated herein are consistent with the provisions of the TSCA section 5(e) consent orders.

In the other 59 cases for which the proposed uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure that:

1. EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical

substance for a significant new use before that activity begins.

2. EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use.

3. When necessary, to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs.

4. All manufacturers, importers, and processors of the same chemical substance which is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the substance is listed on the TSCA Inventory. Manufacturers, importers, and processors are responsible for ensuring that a new chemical substance subject to a final SNUR is listed on the TSCA Inventory.

V. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), this rule will be effective May 27, 2003, unless EPA receives a written notice by April 28, 2003 that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a document to withdraw the direct final SNUR for the specific substance to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance providing a 30-day comment period.

This action establishes SNURs for a number of chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a TSCA section 5(e) consent order requires or recommends certain testing, Unit III. lists those recommended tests.

However, EPA has established production limits in the TSCA section

5(e) consent orders for several of the substances regulated under this rule, in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier consent orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit III. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on:

1. Human exposure and environmental release that may result from the significant new use of the chemical substances.
2. Potential benefits of the substances.
3. Information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2. EPA is required to keep this information confidential to protect the CBI of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a

proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.1725(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus, the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.1725(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. TSCA section 5(e) consent orders have been issued for 3 substances and notice submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received an NOC and the substance has not been

added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 41 of the 62 substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that any of the significant new uses described in the following regulatory text are ongoing.

As discussed in the **Federal Register** of April 24, 1990, EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the official public docket.

X. Statutory and Executive Order Reviews

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that proposed or final SNURs are not a "significant regulatory action" subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive Order.

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070-0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity

described in the rule as a "significant new use." By definition of the word "new," and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN, no economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 900 SNURs, the Agency has received fewer than 25 SNUNs. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of a SNUN (see Unit IX.), are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL-5597-1), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

Based on EPA's experience with proposing and finalizing SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

This rule does not have tribal implications because it is not expected to have substantial direct effects on

Indian Tribes. This does not significantly or uniquely affect the communities of Indian tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), do not apply to this rule.

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the Executive Order.

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a final rule may take effect, the Agency promulgating it must submit a final rule report, which includes a copy of the final rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 17, 2003.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. By adding new § 721.321 to subpart E to read as follows:

§ 721.321 Substituted acrylamides and acrylic acid copolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as substituted acrylamides and acrylic acid copolymer (PMN P–00–0490) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f), (v)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 3. By adding new § 721.338 to subpart E to read as follows:

§ 721.338 Salt of an acrylate copolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances identified generically as salt of an acrylate copolymer (PMNs P–00–0333 and P–00–0334) are subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(2), (w)(2), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 4. By adding new § 721.463 to subpart E to read as follows:

§ 721.463 Acrylate of polymer based on isophorone diisocyanate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as acrylate of polymer based on isophorone diisocyanate (PMN P–00–0626) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), (c)(4) (N=3 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 5. By adding new § 721.465 to subpart E to read as follows:

§ 721.465 Alkoxylated alkylpolyol acrylates, adduct with alkylamine (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances identified generically as alkoxyated alkylpolyol acrylates, adduct with alkylamine (PMNs P-98-0082, P-98-0083, and P-98-0084 are subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 6. By adding new § 721.522 to subpart E to read as follows:

§ 721.522 Oxirane, methyl-, polymer with oxirane, mono(3,5,5-trimethylhexyl) ether.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as oxirane, methyl-, polymer with oxirane, mono(3,5,5-trimethylhexyl) ether (PMN P-99-0669; CAS No. 204336-40-3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

■ 7. By adding new § 721.525 to subpart E to read as follows:

§ 721.525 1-propanol, 3-propoxy-

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as 1-propanol, 3-propoxy- (PMN P-00-

0827; CAS No. 4161-22-2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*.

Requirements as specified in § 721.63 (a)(2)(i) and (a)(3).

(ii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(o) and (j).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

■ 8. By adding new § 721.532 to subpart E to read as follows:

§ 721.532 Substituted hydroxyalkane acetate (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as substituted hydroxyalkane acetate (PMN P-00-0618) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (j).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

■ 9. By adding new § 721.533 to subpart E to read as follows:

§ 721.533 Propane, 1,1,1,3,3-pentachloro-

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as

propane, 1,1,1,3,3-pentachloro- (PMN P-99-1327; CAS No. 23153-23-3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 10. By adding new § 721.638 to subpart E to read as follows:

§ 721.638 Silyl amine, potassium salt (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as silyl amine, potassium salt (PMN P-00-1086) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 11. By adding new § 721.648 to subpart E to read as follows:

§ 721.648 Alkyl dialkylamino phenylsulfonyl alkenoate (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as alkyl dialkylamino phenylsulfonyl alkenoate (PMN P-00-0816) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 12. By adding new § 721.843 to subpart E to read as follows:

§ 721.843 Substituted phenylazophenylazo phenol (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as substituted phenylazophenylazo, phenol (PMN P-00-0420) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 13. By adding new § 721.910 to subpart E to read as follows:

§ 721.910 Propanetriol polyalkylenepolyolamine aryl aldimine (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as propanetriol polyalkylenepolyolamine aryl aldimine (PMN P-99-0873) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 14. By adding new § 721.984 to subpart E to read as follows:

§ 721.984 Amino-hydroxy sulfonaphthylazo-disubstituted phenyl azo benzene carboxylate salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as amino-hydroxy sulfonaphthylazo-disubstituted phenyl azo benzene carboxylate salt (PMN P-00-0351) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(2), (w)(2), (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 15. By adding new § 721.990 to subpart E to read as follows:

§ 721.990 1,4-Benzenedicarboxylic acid, dimethyl ester, polymer with 1,4 - butanediol, cyclized.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4 - butanediol, cyclized (PMN P-00-0789; CAS No. 263244-54-8) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 16. By adding new § 721.1767 to subpart E to read as follows:

§ 721.1767 Substituted 6,6'-(1-methylethylidene)bis[3,4-dihydro-3-phenyl-1,3-benzoxazine] (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as substituted 6,6'-(1-methylethylidene)bis[3,4-dihydro-3-phenyl-1,3-benzoxazine] (PMN P-00-0993) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 17. By adding new § 721.1852 to subpart E to read as follows:

§ 721.1852 Di-alkyl borane (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as di-alkyl borane (PMN P-00-1087) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=200 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 18. By adding new § 721.1878 to subpart E to read as follows:

§ 721.1878 Alkali metal alkyl borohydride (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as alkali metal alkyl borohydride (PMN P-00-1089) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 19. By adding new § 721.1880 to subpart E to read as follows:

§ 721.1880 Borate(1-), tris(acetato-kappa.O)hydro-, sodium, (T-4)-.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as borate(1-), tris(acetato-kappa.O)hydro-, sodium, (T-4)- (PMN P-00-0922; CAS No. 56553-60-7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=300 ppb).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The

provisions of § 721.185 apply to this section.

■ 20. By adding new § 721.2093 to subpart E to read as follows:

§ 721.2093 Alkenyl carboxylate, metal salt (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as alkenyl carboxylate, metal salt (PMN P-99-0848) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j) (an emulsifier for metalworking fluids) and (q).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

■ 21. By adding new § 721.2155 to subpart E to read as follows:

§ 721.2155 Alkoxyamino-alkyl-coumarin (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as alkoxyamino-alkyl-coumarin. (PMN P-00-0108) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 22. By adding new § 721.2465 to subpart E to read as follows:

§ 721.2465 Xanthylum, 9-(2-(ethoxycarbonyl)phenyl)-3,6-bis(ethylamino)-2,7-dimethyl-, ethyl sulfate.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as xanthylum, 9-(2-(ethoxycarbonyl)phenyl)-3,6-bis(ethylamino)-2,7-dimethyl-, ethyl sulfate (PMN P-00-1195; CAS No. 26694-69-9) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f) and (j) (a basic dye for complex basic dye pigment manufacture).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 23. By adding new § 721.2577 to subpart E to read as follows:

§ 721.2577 Copper complex of (substituted sulfonaphthyl azo substituted phenyl) disulfonaphthyl azo, amine salt (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substances identified generically as copper complex of (substituted sulfonaphthyl azo substituted phenyl) disulfonaphthyl azo, amine salt (PMNs P-00-0364 and P-00-0365) are subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (v)(1), (w)(1), (x)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 24. By adding new § 721.2582 to subpart E to read as follows:

§ 721.2582 Reaction product of alkylene diamine, MDI, substituted carbomonocyclic amine and alkylamine (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as reaction product of alkylene diamine, MDI, substituted carbomonocyclic amine and alkylamine (PMN P-98-1262) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 25. By adding new § 721.2584 to subpart E to read as follows:

§ 721.2584 Dodecanoic acid, 12-amino-

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as dodecanoic acid, 12-amino- (PMN P-98-0823; CAS No. 693-57-2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (b) (concentration set at 0.1 percent), and (g). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the NCEL provision listed in the 5(e) consent order for this substance. The NCEL is 1.0 mg/m³ as an 8-hour time-weighted average verified by actual monitoring data.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e), (f), (g)(1)(ii), (g)(1)(vii), (g)(2)(ii), and (g)(2)(iv).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (g), (r) (6,000,000 kg.), and a carcinogenicity study

(OPPTS 870.4200). A person may not manufacture or import the substance beyond the aggregate production volume limit, unless that person conducts this study on the substance and submits all final reports and underlying data in accordance with the procedures and criteria specified in paragraphs (a)(2)(iii)(A), (a)(2)(iii)(B), (a)(2)(iii)(C), and (a)(2)(iii)(D) of this section.

(A) Each study required to be performed pursuant to this section must be scientifically valid. *Scientifically valid* means that the study was conducted according to:

(1) The test guidelines specified in paragraph (a)(2)(iii) of this section.

(2) An EPA-approved protocol.

(3) TSCA Good Laboratory Practice Standards at 40 CFR part 792.

(4) Using methodologies generally accepted at the time the study is initiated.

(5) Any deviation from these requirements must be approved in writing by EPA.

(B) Before starting to conduct any of the studies in paragraph (a)(2)(iii) of this section, the person must obtain approval of test protocols from EPA by submitting written protocols. EPA will respond to the person within 4 weeks of receiving the written protocols. Published test guidelines specified in paragraph (a)(2)(iii) of this section (e.g., 40 CFR part 797 or part 798) provide general guidance for development of test protocols, but are not themselves acceptable protocols.

(C) The person shall:

(1) Conduct each study in good faith with due care.

(2) Promptly furnish to EPA the results of any interim phase of each study.

(3) Submit, in triplicate (with an additional sanitized copy, if confidential business information is involved), the final report of each study and all underlying data ("the report and data") to EPA no later than 14 weeks prior to exceeding the applicable production volume limit. The final report shall contain the contents specified in 40 CFR 792.185.

(D)(1) Except as described in paragraph (a)(2)(iii)(D)(2) of this section, if, within 6 weeks of EPA's receipt of a test report and data, the person receives written notice that EPA finds that the data generated by a study are scientifically invalid, the person is prohibited from further manufacture and import of the PMN substance beyond the applicable production volume limit.

(2) The person may continue to manufacture and import the PMN

substance beyond the applicable production limit only if so notified, in writing, by EPA in response to the person's compliance with either of the following paragraphs (a)(2)(iii)(D)(2)(i) or (a)(2)(iii)(D)(2)(ii) of this section.

(i) The person may reconduct the study. If there is sufficient time to reconduct the study and submit the report and data to EPA at least 14 weeks before exceeding the production limit as required by paragraph (a)(2)(iii)(C)(3) of this section, the person shall comply with paragraph (a)(2)(iii)(C)(3) of this section. If there is insufficient time for the person to comply with paragraph (a)(2)(iii)(C)(3) of this section, the person may exceed the production limit and shall submit the report and data in triplicate to EPA within a reasonable period of time, all as specified by EPA in the notice described in paragraph (a)(2)(iii)(D)(1) of this section. EPA will respond to the person in writing, within 6 weeks of receiving the person's report and data.

(ii) The person may, within 4 weeks of receiving from EPA the notice described in paragraph (a)(2)(iii)(D)(1) of this section, submit to EPA a written report refuting EPA's finding. EPA will respond to the person in writing, within 4 weeks of receiving the person's report.

(E) The person is not required to conduct a study specified in paragraph (a)(2)(iii) of this section if notified in writing by EPA that it is unnecessary to conduct that study.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 26. By adding new § 721.2673 to subpart E to read as follows:

§ 721.2673 Aromatic epoxide resin (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as aromatic epoxide resin (PMN P-99-1399) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 27. By adding new § 721.3805 to subpart E to read as follows:

§ 721.3805 Formaldehyde, reaction products with 1,3-benzenedimethanamine and bisphenol A.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as formaldehyde, reaction products with 1,3-benzenedimethanamine and bisphenol A (PMN P-00-0738; CAS No. 259871-68-6) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 28. By adding new § 721.3807 to subpart E to read as follows:

§ 721.3807 Formaldehyde, polymer with phenol and 1,2,3-propanetriol, methylated.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as formaldehyde, polymer with phenol and 1,2,3-propanetriol, methylated (PMN P-99-0044; CAS No. 209810-57-1) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=3 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 29. By adding new § 721.3812 to subpart E to read as follows:

§ 721.3812 Substituted phenols and formaldehyde polymer, alkylated (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as substituted phenols and formaldehyde polymer, alkylated (PMN P-00-0542) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (a resin for can and tube coatings).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 30. By adding new § 721.3818 to subpart E to read as follows:

§ 721.3818 Furan, octafluorotetrahydro-

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as furan, octafluorotetrahydro- (PMN P-99-0965; CAS No. 773-14-8) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (a heat transfer agent).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 31. By adding new § 721.3848 to subpart E to read as follows:

§ 721.3848 Glycine, N-(carboxymethyl)-N-dodecyl-, monosodium salt.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as glycine, N-(carboxymethyl)-N-dodecyl-, monosodium salt (PMN P-00-469; CAS No. 141321-68-8) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), (c)(4) (N=30 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 32. By adding new § 721.4136 to subpart E to read as follows:

§ 721.4136 Alkyl heteropolycyclic-aniline (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkyl heteropolycyclic-aniline (PMN P-00-0067) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 33. By adding new § 721.4486 to subpart E to read as follows:

§ 721.4486 Propanoic acid, 2-methyl-, (1R,2R,4R)-1,7,7-trimethylbicyclo[2.2.1]hept-2-yl ester, rel-.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances identified as propanoic acid, 2-methyl-, (1R,2R,4R)-1,7,7-

trimethylbicyclo[2.2.1]hept-2-yl ester, rel- (PMNs P-98-0497 and P-98-0509; CAS No. 85586-67-0) are subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (15,000 kg/yr).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 34. By adding new § 721.4575 to subpart E to read as follows:

§ 721.4575 L-aspartic acid, N,N'- [(1E) - 1,2-ethenediylbis[(3-sulfo-4, 1-phenylene)imino [6-(phenylamino)-1,3,5-triazine- 4,2- diyl]]]bis-, hexasodium salt.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as L-aspartic acid, N,N'- [(1E) - 1,2-ethenediylbis[(3-sulfo-4, 1-phenylene)imino[6-(phenylamino)-1,3,5-triazine-4,2-diyl]]]bis-, hexasodium salt (PMN P-99-1167; CAS No. 205764-98-3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (w)(1), (x)(1), and (f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 35. By adding new § 721.4792 to subpart E to read as follows:

§ 721.4792 2-propenoic acid, 2-methyl-, C₁₁₋₁₄-isoalkyl esters, C₁₃-rich.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 2-propenoic acid, 2-methyl-, C₁₁₋₁₄-isoalkyl esters, C₁₃-rich (PMN P-99-1189; CAS No. 85736-97-6) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (a monomer for casting automotive parts adhesives or impregnation fluid).

(ii) *Release to water.* Requirements as specified in § 721.90(c)(4) (N=1 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 36. By adding new § 721.5260 to subpart E to read as follows:

§ 721.5260 1,3,6-Naphthalenetrisulfonic acid, 7-[[2-[(aminocarbonyl)amino]-4-[[4-[[2-[(ethenylsulfonyl)ethoxy]ethyl]amino]-6-fluoro-1,3,5-triazin-2-yl]amino]phenyl]azo], trisodium salt.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 1,3,6-Naphthalenetrisulfonic acid, 7-[[2-[(aminocarbonyl)amino]-4-[[4-[[2-[(ethenylsulfonyl)ethoxy]ethyl]amino]-6-fluoro-1,3,5-triazin-2-yl]amino]phenyl]azo], trisodium salt (PMN P-00-0806; CAS No. 106359-91-5) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 37. By adding new § 721.5262 to subpart E to read as follows:

§ 721.5262 2,7-Naphthalenedisulfonic acid, 5-[[4-chloro-6-[substituted] amino]-1,3,5-triazin-2-yl]amino]-4-hydroxy-3-[(1-sulfo-2-naphthalenyl)azo]-, trisodium salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as 2,7-

Naphthalenedisulfonic acid, 5-[[4-chloro-6-[substituted] amino]-1,3,5-triazin-2-yl]amino]-4-hydroxy-3-[(1-sulfo-2-naphthalenyl)azo]-, trisodium salt (PMN P-00-0803) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 38. By adding new § 721.5283 to subpart E to read as follows:

§ 721.5283 Cobaltate (5-), bis[4-[[6-[(4-amino-6-chloro-1,3,5-triazin-2-yl)amio]-1-hydroxy-3-sulfo-2-naphthalenyl]azo]-3-hydroxy-7-nitro-1-naphthalenesulfonato(4-)]-, pentasodium.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as cobaltate (5-), bis[4-[[6-[(4-amino-6-chloro-1,3,5-triazin-2-yl)amio]-1-hydroxy-3-sulfo-2-naphthalenyl]azo]-3-hydroxy-7-nitro-1-naphthalenesulfonato(4-)]-, pentasodium (PMN P-99-0990; CAS No. 91144-26-2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(ii), (a)(5)(xii), and (a)(5)(xiii).

(ii) *Industrial, commercial, and consumer activities.* Requirements as

specified in § 721.80(j) (a spray applied automotive coating).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 39. By adding new § 721.5286 to subpart E to read as follows:

§ 721.5286 Benzenediazonium, [(((substituted)azo)phenyl)sulfonyl]amino]-, coupled with aminophenol, diazotized aminobenzoic acid, diazotized (substituted) benzenesulfonic acid and naphthalenol (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as benzenediazonium, [(((substituted)azo)phenyl)sulfonyl]amino]-, coupled with aminophenol, diazotized aminobenzoic acid, diazotized (substituted) benzenesulfonic acid and naphthalenol (PMN P-00-0045) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 40. By adding new § 721.5452 to subpart E to read as follows:

§ 721.5452 Alkali metal salt of halogenated organoborate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances identified generically as alkali metal salt of halogenated organoborate (PMN P-00-0638) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 41. By adding new § 721.5454 to subpart E to read as follows:

§ 721.5454 Methylum, triphenyl-, tetrakis(pentafluorophenyl) borate (1-).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances identified as methylum, triphenyl-, tetrakis(pentafluorophenyl) borate (1-) (PMN P-00-0637; CAS No. 136040-19-2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 42. By adding new § 721.5590 to subpart E to read as follows:

§ 721.5590 Oxirane, [(((1R,2S,5R)-5-methyl-2-(1-methylethyl)cyclohexyl)oxy)methyl]-.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as oxirane, [(((1R,2S,5R)-5-methyl-2-(1-methylethyl)cyclohexyl)oxy)methyl]- (PMN P-00-0330; CAS No. 249297-16-3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 43. By adding new § 721.5925 to subpart E to read as follows:

§ 721.5925 Bis heterocyclic phenylene derivative (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as bis heterocyclic phenylene derivative (PMN P-01-0432) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (20,000 kg/yr).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 44. By adding new § 721.6005 to subpart E to read as follows:

§ 721.6005 Rare earth phosphate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances identified generically as rare earth phosphate (PMNs P-99-1191 and P-99-1192) are subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=10).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125

(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 45. By adding new § 721.6178 to subpart E to read as follows:

§ 721.6178 Alkylaminated polyolefin (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylaminated polyolefin (PMN P-99-1287) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 46. By adding new § 721.6181 to subpart E to read as follows:

§ 721.6181 Fatty acid, reaction product with substituted oxirane, formaldehyde-phenol polymer glycidyl ether, substituted propylamine and polyethylenepolyamines (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as fatty acid, reaction product with substituted oxirane, formaldehyde-phenol polymer glycidyl ether, substituted propylamine and polyethylenepolyamines (PMN P-98-1125) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=10ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125

(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 47. By adding new § 721.6183 to subpart E to read as follows:

§ 721.6183 Amides, from ammonium hydroxide - maleic anhydride polymer and hydrogenated tallow alkyl amines, sodium salts, compds. with ethanolamine.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as amides, from ammonium hydroxide - maleic anhydride polymer and hydrogenated tallow alkyl amines, sodium salts, compds. with ethanolamine (PMN P-00-0691; CAS No. 208408-03-1) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=80 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 48. By adding new § 721.6205 to subpart E to read as follows:

§ 721.6205 Hexamethylenediamine adduct of substituted piperidinyloxy (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as hexamethylenediamine adduct of substituted piperidinyloxy (PMN P-99-0510) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(i), (a)(2)(i), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(5)(viii), (a)(5)(ix), (a)(5)(x), (a)(5)(xi), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(5)(xv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), and (a)(6)(vi), (b) (concentration set at 1.0 percent), and (c). The

imperviousness of each item pursuant to paragraph (a)(2)(i) must be demonstrated by actual testing under paragraph (a)(3) and not by manufacturer specifications. Permeation testing shall be conducted according to the American Society for Testing and Materials (ASTM) F739 "Standard Test Method for Resistance of Protective Clothing Materials to Permeation by Liquids or Gases" or its equivalent. Results shall be recorded as a cumulative permeation rate as a function of time, and shall be documented in accordance with ASTM F739 using the format specified in ASTM 1194-89 "Guide for Documenting the Results of Chemical Permeation Testing on Protective Clothing Materials" or its equivalent. Gloves may not be used for a time period longer than they are actually tested and must be replaced at the end of each work shift. The manufacturer, importer, or processor must submit all test data to the Agency and must receive written Agency approval for each type of glove tested prior to use of such gloves. The following gloves have been tested in accordance with the ASTM F739 method and found to satisfy the requirements for use by EPA: Latex (at least 14 mils thick), Nitrile (at least 16 mils thick), and Silvershield (at least 3 mils thick). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the NCEL provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.2 ug/m³ as an 8-hour time weighted average verified by actual monitoring data.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iv), (g)(1)(vi), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), and (g)(5). (iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 49. By adding new § 721.8085 to subpart E to read as follows:

§ 721.8085 Reaction product of substituted aromatic diol, formaldehyde and alkanolamine, propoxylated (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as reaction product of substituted aromatic diol, formaldehyde and alkanolamine, propoxylated (PMN P-00-0202) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 50. By adding new § 721.8658 to subpart E to read as follows:

§ 721.8658 Modified polymer of vinyl acetate and quaternary ammonium compound (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as modified polymer of vinyl acetate and quaternary ammonium compound (PMN P-99-0874) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 51. By adding new § 721.8920 to subpart E to read as follows:

§ 721.8920 4,6-Disubstituted pyrimidine (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as 4,6-disubstituted pyrimidine (PMN P-99-1366) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 52. By adding new § 721.9502 to subpart E to read as follows:

§ 721.9502 Siloxanes and silicones, aminoalkyl, fluoroctyl, hydroxy-terminated salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as siloxanes and silicones, aminoalkyl, fluoroctyl, hydroxy-terminated salt (PMN P-00-1132) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (graffiti systems) and (y)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 53. By adding new § 721.9504 to subpart E to read as follows:

§ 721.9504 Silane, triethoxy (3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluoroctyl)-.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as silane, triethoxy (3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluoroctyl)- (PMN P-99-1346; CAS No. 51851-37-7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(ii), (a)(5)(xii), and (a)(5)(xiii).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 54. By adding new § 721.9520 to subpart E to read as follows:

§ 721.9520 Methylated-para-rosoaniline salt of a trisulfonated triarylmethane dye (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as methylated-para-rosoaniline salt of a trisulfonated triarylmethane dye (PMN P-00-0559) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), (c)(4) (N=2 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 55. By adding new § 721.9538 to subpart E to read as follows:

§ 721.9538 Lithium salt of sulfophenyl azo phenyl azo disulfostilbene (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as lithium salt of sulfophenyl azo phenyl azo disulfostilbene (PMN P-00-0698) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(2), (w)(2), (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 56. By adding new § 721.9597 to subpart E to read as follows:

§ 721.9597 Salt of a substituted sulfonated aryl azo compound (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as salt of a substituted sulfonated aryl azo compound (PMN P-00-0094) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 57. By adding new § 721.9952 to subpart E to read as follows:

§ 721.9952 Alkoxyated aliphatic diisocyanate allyl ether (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkoxyated aliphatic diisocyanate allyl ether (PMN P-00-0353) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 03-7373 Filed 3-27-03; 8:45 am]

BILLING CODE 6560-50-S

GENERAL SERVICES ADMINISTRATION**41 CFR Part 102-173****[FMR Amendment 2003-1]**

RIN 3090-AH41

Federal Management Regulation; Internet GOV Domain

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is adding coverage on the Internet GOV Domain to the Federal Management Regulation (FMR). The purpose of this final rule is to provide a new policy for registration of domain names. The FMR is written in plain language to provide updated regulatory material that is easy to read and understand.

DATES: *Effective Date:* March 28, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208-7312, for information pertaining to status or publication schedules. For clarification of content, contact Lee Ellis, Office of Electronic Government and Technology, at (202) 501-0282, lee.ellis@gsa.gov. Please cite FMR Amendment 2003-1.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of this final rule is to provide a new policy for the Internet GOV Domain that will be included in the FMR. The final rule is written in a plain language question and answer format. This style uses an active voice, shorter sentences, and pronouns. Unless otherwise indicated in the text, the pronoun "we" refers to the General Services Administration (GSA). A question and its answer combine to establish a rule. You must follow the language contained in both the question and its answer.

This final rule establishes FMR part 102-173, Internet GOV Domain, and provides policy for registration of domain names. A proposed rule was published in the **Federal Register** at 67 FR 34890, May 16, 2002. Public comments were solicited for use in the formulation of the final rule. All comments were consolidated and each one considered through a formal process. Comments received were from private citizens, Federal, State, and local government organizations, information technology standards organizations, and commercial businesses. Particularly worth noting are the comments concerning the cost for dot-gov registration. GSA currently assesses no charge. The rule merely establishes a ceiling for the charges that GSA may assess in the future if circumstances require it. These charges, if established, will be based on the costs of operations and market rates. An earlier regulation was previously located in the Federal Property Management Regulation (FPMR) (41 CFR part 101-35, subpart 101-35.7, Network Address Registration) and expired on August 8, 2001.

Jurisdiction of the Internet GOV (dot-gov) domain was delegated to GSA in 1997 by the Federal Networking Council with guidance in the form of Internet Engineering Task Force Informational RFC 2146. Since then, the U.S. Government use of the Internet has evolved and is rapidly emerging as an electronic government without boundaries. Federal organizations are choosing dot-gov domain names to reflect the type of service being rendered and are collaborating to form portals that cross boundaries of agencies, departments, and other U.S. government entities. GSA reserves the right to make exceptions to the naming conventions described in this subpart on a case-by-case basis in unique and compelling cases.

In addition, there is increasing interest from non-Federal U.S. government entities, such as State and

local governments, and Federally recognized Indian tribes, known in this rule as Native Sovereign Nations (NSNs), to provide service within the dot-gov domain. Many such governmental entities believe that their citizens are likely to associate their government at all levels with the dot-gov domain, and therefore, want the additional option of positioning their governmental portal to the public within this space. GSA has entered into an agreement with the Department of the Interior's Bureau of Indian Affairs to facilitate the registration of NSNs in the dot-gov domain.

B. Executive Order 12866

This is a significant rule and was subject to Office of Management and Budget review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

C. Regulatory Flexibility Act

We certify that the amendments will not have a significant economic impact on a substantial number of small entities, because the registration and renewal fees, and paperwork collection burden will be small.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Congressional Review Act

This final rule is not a major rule under 5 U.S.C. 804.

F. Unfunded Mandates Reform Act of 1995

This final rule does not significantly or uniquely affect small governments or tribal governments. It does not result in expenditures by State, local, or tribal governments, or to the private sector, of \$100 million or more in any one year.

G. Executive Order 13132 on Federalism

This final rule does not have Federalism implications.

There are no 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.

List of Subjects in 41 CFR Part 102-173

Archives and records, Computer technology, Federal information processing resources activities,

Government procurement, Property management, Records management, Telecommunications.

Dated: March 24, 2003.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR chapter 102 as follows:

CHAPTER 102—[AMENDED]

■ 1. Part 102-173 is added to subchapter F of chapter 102 to read as follows:

PART 102-173—INTERNET GOV DOMAIN

Subpart A—General

Sec.

- 102-173.5 What is Internet GOV Domain?
- 102-173.10 What is the authority or jurisdiction of the Internet GOV Domain?
- 102-173.15 What is the scope of this part?
- 102-173.20 To whom does this part apply?
- 102-173.25 What definitions apply to this part?

Subpart B—Registration

- 102-173.30 Who may register in the dot-gov domain?
- 102-173.35 Who authorizes domain names?
- 102-173.40 Who is my Chief Information Officer (CIO)?
- 102-173.45 Is there a registration charge for domain names?
- 102-173.50 What is the naming convention for States?
- 102-173.55 What is the naming convention for Cities and Townships?
- 102-173.60 What is the naming convention for Counties or Parishes?
- 102-173.65 What is the naming convention for Native Sovereign Nations?
- 102-173.70 Where do I register my dot-gov domain name?
- 102-173.75 How long does the process take?
- 102-173.80 How will I know if my request is approved?
- 102-173.85 How long will my application be held, pending approval by the Chief Information Officer (CIO)?
- 102-173.90 Are there any special restrictions on the use and registration canonical, or category names like recreation.gov?
- 102-173.95 Are there any restrictions on the use of the dot-gov domain name?

Authority: 40 U.S.C. 486(c).

Subchapter F—Telecommunications

* * * * *

Subpart A—General

§ 102-173.5 What is Internet GOV Domain?

Internet GOV Domain refers to the Internet top-level domain "dot-gov" operated by the General Services Administration for the registration of U.S. government-related domain names. In general, these names reflect the organization names in the Federal Government and non-Federal

government entities in the United States. These names are now being used to promote government services and increase the ease of finding these services.

§ 102-173.10 What is the authority or jurisdiction of the Internet GOV Domain?

Jurisdiction of the Internet GOV (dot-gov) domain was delegated to the General Services Administration in 1997 by the Federal Networking Council with guidance in the form of Internet Engineering Task Force (IETF) Informational RFC 2146, which can be obtained on the Internet at: <http://www.ietf.org/rfc/rfc2146.txt?number=2146>.

§ 102-173.15 What is the scope of this part?

This part addresses the registration of second-level domain names used in the Internet GOV Domain. This registration process assures that the assigned domain names are unique worldwide.

§ 102-173.20 To whom does this part apply?

This part applies to Federal, State, and local governments, and Native Sovereign Nations. You do not need to register domain names with the General Services Administration if you will be using some other top-level domain registration, such as dot-us, dot-org, or dot-net.

§ 102-173.25 What definitions apply to this part?

The following definitions apply to this part:

Domain is a region of jurisdiction on the Internet for naming assignment. The General Services Administration (GSA) is responsible for registrations in the dot-gov domain.

Domain name is a name assigned to an Internet server. This is the name that you request from GSA. Typically, you would apply this name to a domain name server. A domain name locates the organization or other entity on the Internet. The dot gov part of the domain name reflects the purpose of the organization or entity. This part is called the Top-Level Domain name. The Second-Level Domain name to the left of the dot gov maps to a readable version of the Internet address. The Domain Name server has a registry of Internet Protocol (IP) address numbers that relate to the readable text name.

Domain name server is the computer that provides pointers from the domain name to the actual computers.

Dot-gov refers to domain names ending with a ".gov" suffix. The Internet GOV domain is another way of

expressing the collection of dot-gov domain names.

Native Sovereign Nations (NSN) are federally recognized tribes.

Subpart B—Registration

§ 102–173.30 Who may register in the dot-gov domain?

Registration in the dot-gov domain is available to official governmental organizations in the United States including Federal, State, and local governments, and Native Sovereign Nations.

§ 102–173.35 Who authorizes domain names?

Domain names must be authorized by the Chief Information Officer (CIO) of the requesting or sponsoring governmental organization. For Federal departments and agencies, the General Services Administration (GSA) will accept authorization from the CIO of the department or agency. For independent Federal government agencies, boards, and commissions, GSA will accept authorization from the highest-ranking Information Technology Official. For State and local governments, GSA will accept authorization from appropriate State or local officials, *see* § 102–173.40.

For Native Sovereign Nations, GSA will only accept authorization from the Bureau of Indian Affairs, Department of the Interior. In most cases, GSA will not make determinations on the appropriateness of the selected domain names, but reserves the right to not assign domain names on a case-by-case basis. Non-Federal government domain names must follow the naming conventions described in §§ 102–173.50 through 102–173.65. For other government entities, CIO's may delegate this authority by notification to GSA.

§ 102–173.40 Who is my Chief Information Officer (CIO)?

Your Chief Information Officer (CIO) may vary according to the branch of government. For the Federal Government, the General Services Administration (GSA) recognizes the cabinet level CIOs listed at <http://www.cio.gov>. For States, GSA will accept authorization from the Office of the Governor or highest-ranking Information Technology (IT) official. Other officials include the Mayor (for city or town), County Commissioner (for counties) or highest ranking IT official. Native Sovereign Nations (NSN) must receive authorization from the Bureau of Indian Affairs. CIOs may delegate this authority by notification to GSA.

§ 102–173.45 Is there a registration charge for domain names?

The General Services Administration (GSA) reserves the right to charge for domain names in order to recover cost of operations. For current registration charges, please visit the GSA Web site at <http://www.nic.gov>. GSA does not currently charge a fee. GSA has the authority to employ a system of collection that includes a one-time setup fee for new registrations, which will not exceed \$1000, depending on the level of assistance that may be provided by GSA, and a recurring annual charge that will not exceed \$500 for all dot-gov domains. The fees are based on anticipated costs for operating the registration service.

§ 102–173.50 What is the naming convention for States?

(a) To register any second-level domain within dot-gov, State government entities must register the full State name or clearly indicate the State postal code within the name. Examples of acceptable names include virginia.gov, tennesseeanytme.gov, wa.gov, nmparks.gov, mysc.gov, emaryland.gov, and ne-taxes.gov. However—

(1) Use of the State postal code should not be embedded within a single word in a way that obscures the postal code. For example, Indiana (IN) should not register for win.gov, or independence.gov; and

(2) Where potential conflicts arise between postal codes and existing domain names, States are encouraged to register URL's that contain the full State name.

(b) There is no limit to the number of domain names for which a State may register.

(c) States are encouraged to make second-level domains available for third-level registration by local governments and State Government departments and programs. For example, the State of North Carolina could register NC.GOV as a second-level domain and develop a system of registration for their local governments. The State would be free to develop policy on how the local government should be registered under NC.GOV. One possibility might be to spell out the city, thus Raleigh.NC.gov could be a resulting domain name.

§ 102–173.55 What is the naming convention for Cities and Townships?

(a) To register any second-level domain within dot-gov, City (town) governments must register the domain name with the city (town) name or abbreviation, and clear reference to the

State in which the city (town) is located. However—

(1) Use of the State postal code should not be embedded within a single word in a way that obscures the postal code; and

(2) Inclusion of the word city or town within the domain name is optional and may be used at the discretion of the local government.

(b)(1) The preferred format for city governments is to denote the State postal code after the city name, optionally separated by a dash. Examples of preferred domain names include—

- (i) Chicago-il.gov;
- (ii) Cityofcharleston-sc.gov;
- (iii) Charleston-wv.gov;
- (iv) Townofdumfries-va.gov; and
- (v) Detroitmi.gov.

(2) GSA reserves the right to make exceptions to the naming conventions described in this subpart on a case-by-case basis in unique and compelling cases.

(c) If third-level domain naming is used, GSA reserves the right to offer exceptions to the third-level domain naming conventions described in this section on a case-by-case basis in unique and compelling cases.

§ 102–173.60 What is the naming convention for Counties or Parishes?

(a) To register any second-level domain within dot-gov, County or Parish governments must register the County's or Parish's name or abbreviation, the word "county" or "parish" (because many counties have the same name as cities within the same State), and a reference to the State in which the county or parish is located. However, the use of the State postal code should not be embedded within a single word in a way that obscures the postal code.

(b) The preferred format for county or parish governments is to denote the State postal code after the county or parish, optionally separated by a dash. Examples of preferred domain names include—

- (1) Richmondcounty-ga.gov;
- (2) Pwc-county-va.gov; and
- (3) Countyofdorchestor-sc.gov.

(c) If third-level domain naming is available from the State government, counties or parishes are encouraged to register for a domain name under a State's registered second-level (e.g., richmondcounty.ga.gov).

§ 102–173.65 What is the naming convention for Native Sovereign Nations?

To register any second-level domain in dot-gov, Native Sovereign Nations (NSN) may register any second-level

domain name provided that it contains the registering NSN name followed by a suffix of “-NSN.gov” (case insensitive).

§ 102–173.70 Where do I register my dot-gov domain name?

Registration is an online process at the General Services Administration’s Web site at <http://www.nic.gov>. At the Network Information Site, you will find the instructions and online registration forms for registering your domain name. To register your domain name you will need to provide information such as your desired domain name, sponsoring organization, points of contact, and at least two name server addresses.

§ 102–173.75 How long does the process take?

The process can be completed within 48 hours if all information received is complete and accurate. Most requests take up to thirty (30) days because the registrar is waiting for Chief Information Officer (CIO) approval.

§ 102–173.80 How will I know if my request is approved?

A registration confirmation notice is sent within one business day after you register your domain name, informing you that your registration information was received. If all of your information is accurate and complete, a second notice will be sent to you within one business day, informing you that all of your information is in order. If you are ineligible, or if the information provided is incorrect or incomplete, your registration will be rejected and a notice will be sent to you stating the reason for rejection. Registration requests will be activated within two business days after receiving valid authorization from the appropriate Chief Information Officer (CIO). Once your domain name has been activated, a notice will be sent to you.

§ 102–173.85 How long will my application be held, pending approval by the Chief Information Officer (CIO)?

Registrations will be held in reserve status for sixty (60) days pending Chief Information Officer (CIO) authorization from your sponsoring organization.

§ 102–173.90 Are there any special restrictions on the use and registration of canonical, or category names like recreation.gov?

Yes, canonical names registration request must provide access coverage for the areas conveyed by the name. So the URL recreation.gov would not be approved for the state of Maryland, but the URL recreationMD.gov would be approved if it provides statewide coverage. The logic of the names adds value to the dot gov domain. GSA

reserves the right deny use of canonical names that do not provide appropriate coverage and to arbitrate these issues.

§ 102–173.95 Are there any restrictions on the use of the dot-gov domain name?

The General Services Administration approves domain names for a specific term of time, generally two years unless otherwise stated, and under conditions of use. General conditions of registration and are posted at the registration Web site at <http://www.nic.gov> and may be modified over time. Organizations that operate web sites that are not in compliance with the conditions of use may have their domain name terminated.

[FR Doc. 03–7413 Filed 3–27–03; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 32

RIN 0990–AA05

Administrative Wage Garnishment

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This final rule adds new regulations to implement the administrative wage garnishment provisions (AWG) of the Debt Collection Improvement Act of 1996 (DCLA). The rule will allow the Department of Health and Human Services (HHS) to garnish the disposable pay of non-Federal employees to collect delinquent non-tax debts owed to the United States without first obtaining a court order.

EFFECTIVE DATE: These regulations are effective on April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Katherine M. Drews, Associate General Counsel, Office of the General Counsel, Business and Administrative Law Division at 202–619–0150.

SUPPLEMENTARY INFORMATION:

Background

This regulation implements the administrative wage garnishment provisions in section 31001(o) of the Debt Collection Improvement Act of 1996 (DCLA), Public Law 104–134, 110 Stat. 1321–358, codified at 31 U.S.C. 3720D. Under the administrative wage garnishment provisions of the DCIA, Federal agencies may garnish administratively up to 15 percent of the wages of a debtor to satisfy a delinquent non-tax debt owed to the United States. Prior to the enactment of the DCIA,

Federal agencies were required to obtain a court judgment before garnishing the wages of non-Federal employees. Section 31001(o) of the DCLA preempts State laws that prohibit wage garnishment or otherwise govern wage garnishment procedures.

As authorized by the DCIA, a Federal agency collecting a delinquent non-tax debt may garnish a delinquent debtors wages in accordance with regulations promulgated by the Secretary of the Treasury. The Financial Management Service (EMS), a bureau of the Department of the Treasury (Treasury), is responsible for promulgating the regulations implementing this and other debt collection tools established by the DCIA. FMS published its final rule at 63 FR 25136, May 6, 1998, (Treasury Final Rule) and published a technical amendment at 64 FR 22901, April 28, 1999. The Treasury Final Rule, as amended, is published in § 285.11 of title 31 of the Code of Federal Regulations. Pursuant to 31 CFR 285.11(f), Federal agencies must either prescribe regulations for the conduct of AWG hearings consistent with the procedural requirements set forth in the Treasury Final Rule or adopt § 285.11 without change by reference.

Basic Provisions

In accordance with the requirements of the DCIA and the implementing regulations at 31 CFR 285.11, the rule establishes the rules and procedures for providing a debtor with written notice at least 30 days before the Department initiates garnishment proceedings, an opportunity to inspect and copy Department records relating to the debt, an opportunity to enter into a repayment agreement, and an opportunity to receive a hearing concerning the existence or amount of the debt and the terms of a repayment schedule. The rule also establishes the employer’s responsibilities for carrying out a wage garnishment order issued by the Department.

Rules and Procedures

Except for minor editorial changes to make the provisions agency-specific, the proposed rule is substantially identical to the Treasury Final Rule. In accordance with the substantive and procedural requirements of the DCIA and the Treasury Final Rule, this rule would establish for HHS the following rules and procedures:

1. Providing a debtor with written notice at least 30 days before the Department initiates garnishment proceedings informing the debtor of the nature and amount of the debt, the intention of the Department to collect

the debt through deductions from the debtor's disposable pay, and the debtors rights regarding the proposed action.

2. Providing the debtor with an opportunity to inspect and copy Department records relating to the debt, to enter into a repayment agreement with the Department, and to receive a hearing concerning the existence or amount of the debt and the terms of a repayment schedule.

3. Conducting a hearing prior to the issuance of a withholding order, if the debtors request for a hearing is timely received by HHS. When a debtor's request for a hearing is not received within the time period specified, HHS will not delay issuance of a withholding order prior to conducting the hearing.

4. Sending to the employer of a delinquent debtor a wage garnishment order directing the employer to withhold up to 15% of the debtors disposable pay and remit those amounts to the Federal government.

5. Requiring the debtor's employer to certify certain payment information about the debtor.

Analysis of and Responses to Public Comments

We published a proposed rule on this subject on December 4, 2002 (67 FR 72128-72130).

No public comments were received.

Economic Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980; Pub. L. 96-354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 (the Order) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). We have determined that this rule is consistent with the principles set forth in the Order, and we find this rule would not have an effect on the economy that exceeds \$100 million in any one year. In addition, this rule is not a major rule as defined at 5 U.S.C. 804(2). In accordance with the provisions of the Order, this regulation

was reviewed by the Office of Management and Budget.

It is hereby certified under the RFA that this regulation, including the certification referenced in this rulemaking (see § 32.7), will not have a significant economic impact on a substantial number of small entities. This rule applies only to individuals, as well as employers of such individuals, with delinquent debts owed to the United States. Although a substantial number of small entities will be subject to this regulation and to the certification requirement in this rule, the requirements will not have a significant economic impact on these entities. Employers of delinquent debtors must certify certain information about the debtor such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer is served withholding orders on several employees over the course of a year, the cost imposed on the employer to complete the certifications would not have a significant economic impact on that entity. Employers are not required to vary their normal pay cycles in order to comply with a withholding order issued pursuant to this rule.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million. As noted above, we find that this rule would not have an effect of this magnitude on the economy.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. We have reviewed this rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that this rule would not have substantial direct effect on the States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. As there are no federalism implications, a federalism impact statement is not required.

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, this rule will impose no new reporting

or record-keeping requirements on employers. As noted above, although an employer of a delinquent debtor must certify certain information about the debtor, the employer's payroll records already contain this information, and, even if an employer receives withholding orders on several employers, the burden of completing the certification would not be significant. Furthermore, we believe that these reporting requirements fall within the "administrative action" exemption in § 1320.4(a)(2) of the Paperwork Reduction Act.

Provisions of the Final Regulations

This final rule incorporates the provisions of the proposed rule. There are no provisions in this final rule that differ from the proposed rule.

List of Subjects in 45 CFR Part 32

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Hearings and appeal procedures, Salaries, Wages.

■ For the reasons set forth in the preamble, HHS amends 45 CFR subtitle A by adding part 32 to read as follows:

PART 32—ADMINISTRATIVE WAGE GARNISHMENT

Sec.	
32.1	Purpose and scope.
32.2	Definitions.
32.3	General rule.
32.4	Notice.
32.5	Hearing.
32.6	Withholding order.
32.7	Certification by employer.
32.8	Amounts withheld.
32.9	Financial hardship.
32.10	Refunds.
32.11	Ending garnishment.
32.12	Right of action.

Authority: 31 U.S.C. 3720D, 5 U.S.C. 552, 553, E.O. 12866, 12988, 13808.

§ 32.1 Purpose and scope.

(a) *Purpose.* This part prescribes the standards and procedures for the Department to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent non-tax debts owed to the United States.

(b) *Authority.* These standards and procedures are authorized under the wage garnishment provisions of the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. 3720D, and the Department of the Treasury Administrative Wage Garnishment Regulations at 31 CFR 285.11.

(c) *Scope.* (1) This part applies to all Departmental Operating Divisions and Regional Offices that administer a program that gives rise to a delinquent

non-tax debt owed to the United States and to all officers or employees of the Department authorized to collect such debt.

(2) This part shall apply notwithstanding any provision of State law.

(3) Nothing in this part precludes the compromise of a debt or the suspension or termination of collection action in accordance with part 30 of this title, or other applicable law or regulation.

(4) The receipt of payments pursuant to this part does not preclude the Department from pursuing other debt collection remedies, including the offset of Federal payments to satisfy delinquent non-tax debt owed to the United States. The Department may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(5) This part does not apply to the collection of delinquent non-tax debts owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

(6) Nothing in this part requires the Department to duplicate notices or administrative proceedings required by contract or other laws or regulations.

§ 32.2 Definitions.

In this part, unless the context otherwise requires:

Business day means Monday through Friday. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday, in which case the next business day following the holiday will be considered the last day of the period.

Certificate of service means a certificate signed by an employee of the Department indicating the nature of the document to which it pertains, the date of mailing of the document, and to whom it is being sent.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal legal holiday, in which case the next business day will be considered the last day of the period.

Debt or claim means an amount of money, funds, or property that has been determined by the Secretary to be owed to the United States by an individual, including debt administered by a third party as an agent of the Federal Government. A debt or claim includes, but is not limited to: amounts owed on account of loans made, insured or guaranteed by the Federal Government, including any deficiency or difference

between the price obtained by the Federal Government upon selling the property and the amount owed to the Federal Government; overpayments to program beneficiaries; any amount the Federal Government is authorized by statute to collect for the benefit of any person; the unpaid share of any non-Federal partner in a program involving a Federal payment, including a matching or cost-sharing payment of the non-Federal partner; any fine, civil penalty or assessment; and other amounts or money or property owed to the Federal Government.

Debtor means an individual who owes a delinquent non-tax debt to the United States.

Delinquent debt means any non-tax debt that has not been paid by the date specified in the Department's initial written demand for payment, or applicable payment agreement or instrument, unless other satisfactory payment arrangements have been made. For purposes of this part, "delinquent" and "overdue" have the same meaning.

Department means the United States Department of Health and Human Services, including each of its Operating Divisions and Regional Offices.

Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this part, "amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

Employer means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government as defined by 31 CFR 285.11(c).

Garnishment means the process of withholding amounts from an employee's disposable pay and paying those amounts to a creditor in satisfaction of a withholding order.

Hearing means a review of the documentary evidence concerning the existence or amount of a debt, or the terms of a repayment schedule, provided such repayment schedule is established other than by a written agreement entered into pursuant to this part. If the hearing official determines that the issues in dispute cannot be resolved solely by review of the written record, such as when the validity of the debt turns on the issue of credibility or

veracity, an oral hearing may be provided.

Hearing official means any qualified individual, as determined by the Secretary, including a Departmental Appeals Board administrative law judge.

Secretary means the Secretary of Health and Human Services, or the Secretary's designee within the Department.

Withholding order for purposes of this part means "Wage Garnishment Order (SF329B)." Also for purposes of this part, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

§ 32.3 General rule.

(a) Except as provided in paragraph (b) of this section, whenever a delinquent debt is owed by an individual, the Secretary, or another federal agency collecting a debt on the Department's behalf (See 45 CFR part 30), may initiate proceedings administratively to garnish the wages of the delinquent debtor.

(b) The Secretary may not garnish the wages of a debtor who the Secretary knows has been involuntarily separated from employment until the debtor has been re-employed continuously for at least 12 months. The debtor has the burden of informing the Secretary of the circumstances surrounding an involuntary separation from employment.

§ 32.4 Notice.

(a) Notice requirements. At least 30 days before the initiation of garnishment proceedings, the Secretary shall mail, by first class mail, to the debtor's last known address a written notice informing the debtor of:

(1) The nature and amount of the debt;

(2) The intention of the Secretary to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties, and administrative costs are paid in full;

(3) The debtor's right—

(i) To inspect and copy Department records related to the debt;

(ii) To enter into a written repayment agreement with the Department under terms agreeable to the Department;

(iii) To a hearing, in accordance with § 32.5, concerning the existence or the amount of the debt or the terms of the proposed repayment schedule under the garnishment order, except that the debtor is not entitled to a hearing concerning the proposed repayment schedule if the terms were established

by written agreement pursuant to paragraph (a)(3)(ii) of this section; and

(4) The time frames within which the debtor may exercise his or her rights.

(b) The Secretary will keep a copy of the dated notice. The notice may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

§ 32.5 Hearing.

(a) *In general.* Upon timely written request of the debtor, the Secretary shall provide a hearing, which at the Department's option may be oral or written, concerning the existence or amount of the debt, or the terms of a repayment schedule established other than by written agreement under § 32.4(a)(3)(ii).

(b) *Request for hearing.* (1) The request for a hearing must be signed by the debtor, state each issue being disputed, and identify and explain with reasonable specificity all facts and evidence that the debtor believes supports the debtor's position. Supporting documentation identified by the debtor should be attached to the request.

(2) Effect of timely request. Subject to paragraph (j) of this section, if the debtor's written request is received on or before the 15th business day following the mailing of the written notice required under this part, a withholding order shall not be issued under § 32.6 until the debtor has been provided the requested hearing and a decision in accordance with paragraphs (g) and (h) of this section has been rendered.

(3) Failure to timely request a hearing. If the debtor's written request is received after the 15th business day following the mailing of the written notice required under this part, the Secretary shall provide a hearing to the debtor. However, the Secretary shall not delay the issuance of a withholding order unless the Secretary determines that the delay in submitting such request was caused by factors beyond the control of the debtor, or the Secretary receives information that the Secretary determines justifies a delay or cancellation of the withholding order.

(c) *Oral hearing.* (1) For purposes of this section, a debtor shall be provided a reasonable opportunity for an oral hearing when the hearing official determines that the issues in dispute cannot be resolved by review of the documentary evidence, such as when the validity of the claim turns on the issue of credibility or veracity.

(2) If the hearing official determines an oral hearing is appropriate, the hearing official will establish the date,

time and location of the hearing. At the debtor's option, the oral hearing may be conducted in person or by telephone conference. The hearing official will notify the debtor of the date, time, and in the case of an in-person hearing, the location of the hearing. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor.

(d) *Paper hearing.* (1) If the hearing official determines an oral hearing is not required by this section, the hearing official shall afford the debtor a paper hearing, that is, the issues in dispute will be decided based upon a review of the written record.

(2) The hearing official shall notify the debtor of the deadline for the submission of additional evidence if necessary for a review of the record.

(e) *Burden of proof.* (1) The Secretary has the initial burden of proving the existence or amount of the debt.

(2) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must present by a preponderance of the evidence that no debt exists or that the amount is incorrect. When challenging the terms of a repayment schedule, the debtor must establish by a preponderance of the evidence that the terms of the repayment schedule are unlawful, would cause financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.

(f) *Record.* The hearing official shall maintain a summary record of any hearing provided under this part. A hearing is not required to be a formal evidentiary-type hearing, but witnesses who testify in an oral hearing must do so under oath or affirmation.

(g) *Date of decision.* (1) The hearing official shall issue a written decision, as soon as practicable, but no later than sixty (60) days after the date on which the request for the hearing was received by the Department.

(2) If the hearing official is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing:

(i) A withholding order may not be issued until the hearing is held and a decision is rendered; or

(ii) A withholding order previously issued to the debtor's employer must be suspended beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(h) *Content of decision.* The written decision shall include:

(1) A summary of the facts presented;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedule, if applicable.

(i) *Final agency action.* The hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

(j) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at a hearing will be deemed as not having timely filed a request for a hearing.

§ 32.6 Withholding order.

(a) Unless the Secretary receives information that the Secretary determines justifies a delay or cancellation of a withholding order, the Secretary shall send, by first class mail, an SF-329A "Letter to Employer & Important Notice to Employer," an SF-329B "Wage Garnishment Order," an SF-329C "Wage Garnishment Worksheet," and an SF-329D "Employer Certification," to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing, *i.e.*, within 15 business days after mailing the notice required under this part, or, if the timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the Secretary to proceed with garnishment.

(b) The Secretary shall keep a copy of the dated letter to the employer and a copy of the wage garnishment order. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

§ 32.7 Certification by employer.

The employer must complete and return the SF-329D, "Employer Certification" to the Department within 20 days of receipt.

§ 32.8 Amounts withheld.

(a) After receipt of a withholding order issued under this part, the employer shall deduct from all disposable pay paid to the debtor during each pay period the amount of garnishment described in paragraph (b) of this section. The employer may use the SF-329C "Wage Garnishment Worksheet" to calculate the amount to be deducted from the debtor's disposable pay.

(b) Subject to paragraphs (c) and (d) of this section, the amount of garnishment shall be the lesser of:

(1) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(2) The amount set forth in 15 U.S.C. 1673(a)(2) (Maximum allowable

garnishment). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. See 29 CFR 870.10.

(1) Except as provided in paragraph (c)(2) of this section, when a debtor's pay is subject to multiple withholding orders, unless otherwise provided by Federal law, withholding orders issued pursuant to this part shall have priority over other withholding orders that are served later in time.

(2) Notwithstanding the foregoing, withholding orders for family support shall have priority over withholding orders issued under this part.

(3) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this part, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to a withholding order issued under this part shall be the lesser of:

(i) The amount calculated under paragraph (b) of this section, or

(ii) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(d) If the debtor owes more than one debt to the Department, the Secretary may issue multiple withholding orders provided that the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (b) of this section.

(e) An amount greater than that set forth in paragraphs (b) or (c) of this section may be withheld upon the written consent of the debtor.

(f) The employer shall promptly pay to the Department all amounts withheld in accordance with the withholding order issued pursuant to this part.

(g) The employer is not required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(h) Any assignment or allotment by an employee shall be void to the extent it interferes with or prohibits execution of the withholding order issued under this part, except for any assignment or allotment made pursuant to a family support judgment or order.

(i) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the Secretary to discontinue wage withholding.

(j) The withholding order, SF-329B "Wage Garnishment Order," sent to the employer under § 32.6, requires the employer to commence wage

withholding on the first pay day after the employer receives the order. However, if the first pay day is within 10 days after receipt of the order, the employer may begin deductions on the second pay day.

(k) An employer may not discharge, refuse to employ, or take disciplinary action against a debtor a result of the issuance of a withholding order under this part.

§ 32.9 Financial hardship.

(a) A debtor whose wages are subject to a withholding order may, at any time, request a review by the Department of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(b) A debtor requesting such a review under paragraph (a) of this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation. The Secretary shall consider any information submitted in accordance with this part.

(c) If a financial hardship is found, the Secretary shall downwardly adjust, by an amount and for a period of time established by the Secretary, the amount garnished to reflect the debtor's financial condition. The Secretary will notify the employer of any adjustments to the amount to be withheld.

§ 32.10 Refunds.

(a) If the hearing official, pursuant to a hearing under this part, determines that a debt is not legally due and owing to the United States, the Secretary shall promptly refund any amount collected by means of administrative wage garnishment.

(b) Unless required by Federal law or contract, refunds under this part shall not bear interest.

§ 32.11 Ending garnishment.

(a) Once the Department has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs assessed pursuant to and in accordance with part 30 of this title, the Secretary shall send the debtor's employer notification to discontinue wage withholding.

(b) At least annually, the Secretary shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

§ 32.12 Right of action.

(a) The employer of a debtor subject to wage withholding pursuant to this

part shall pay to the Department as directed in a withholding order issued under this part.

(b) The Secretary may bring suit against an employer for any amount that the employer fails to withhold from wages owed and payable to a debtor in accordance with §§ 32.6 and 32.8, plus attorney's fees, costs, and, if applicable, punitive damages.

(c) A suit under this section may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, "termination of collection action" occurs when the Secretary has terminated collection action in accordance with part 30 of this title, or other applicable law or regulation.

(d) Notwithstanding deemed to occur if from a debtor whose paragraph (c) of this section, termination of the collection action will be a period of one (1) year the Department does not receive any payments wages were subject to a garnishment order issued under this part.

Dated: March 21, 2003.

Tommy G. Thompson,
Secretary.

[FR Doc. 03-7394 Filed 3-27-03; 8:45 am]

BILLING CODE 4150-04-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 73 and 76

[GC Docket No. 02-37; FCC 03-45]

Truthful Statements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its regulations relating to the submission of truthful information to the Commission. Under the former rule, Commission regulatees were prohibited, in any written statement submitted to the Commission, from making any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission. The new rule provides that specified persons covered by the rule may not, in proceedings covered by the rule, make written or oral statements of fact that are, in material respects, intentionally incorrect or misleading or make written statements of fact without a reasonable basis for believing that the statement is correct and not misleading.

DATES: Effective March 28, 2003.

FOR FURTHER INFORMATION CONTACT:

David S. Senzel, Office of General Counsel (202) 418-1720.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O), GC Docket No. 02-37, adopted on March 4, 2003, and released March 10, 2003. The full text of the R&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Copies of filings may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898. Filings may also be viewed on the Commission's Internet Web site using the Electronic Document Filing System (ECFS) at http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi.

Summary of Report and Order

1. In our Notice of Proposed Rulemaking, 67 FR 10658, March 8, 2002 we proposed to amend § 1.17 of our rules, 47 CFR 1.17, which relates to the submission of truthful statements to the Commission. The comments that we received were helpful in clarifying the appropriate scope of the rule, and by this Report and Order we amend the rule accordingly. We also make conforming amendments to 47 CFR 73.1015 and 47 CFR 76.939. The new rule is a clearer, more comprehensive, and more focused articulation of the standards for truthful statements than the old rule. The new rule will also enhance the effectiveness of our enforcement efforts.

2. The new rule broadens the category of persons subject to the rule by applying the requirement to: (1) Any holder of any Commission authorization, whether by application or by blanket authorization or other rule; (2) any person performing without Commission authorization an activity that requires Commission authorization; (3) any person that has received a citation or a letter of inquiry from the Commission or its staff, or is otherwise the subject of a Commission or staff investigation, including an informal investigation; (4) in a proceeding to amend the FM or Television Table of Allotments, any person filing an expression of interest, and (5) to the extent not already covered above, any cable operator or common carrier. The rule does not apply to attorneys or engineers who file statements in a representational capacity on behalf of

the entities specified. Attorneys and engineers are covered only to the extent that they are themselves the regulated entity.

3. The amended rule applies to investigatory proceedings and adjudicatory proceedings other than declaratory ruling proceedings. It does not apply to rulemakings generally but does apply to expressions of interest in proceedings to amend the FM or Television Table of Allotments and to tariff proceedings. The primary focus of the new rule is to enhance the effectiveness of adjudicatory and investigatory proceedings by providing for an expanded range of sanctions that can be imposed in those contexts. We do not see rulemakings of general applicability and declaratory rulings as raising enforcement issues of the same urgency. Additionally, while we expect parties to be truthful in rulemakings and declaratory ruling proceedings, we are mindful that such proceedings typically involve wide-ranging discussions of general policy rather than specific facts to be weighed in an adjudicatory manner. We do not wish to hinder full and robust public participation in such policymaking proceedings by encouraging collateral wrangling over the truthfulness of the parties' statements. Expressions of interest in proceedings to amend the FM or Television Table of Allotments, and tariff proceedings raise concerns that are distinguishable from those in rulemakings generally and will be subject to the rule.

4. The new rule prohibits written and oral statements of fact that are intentionally incorrect or misleading and written statements that are made without a reasonable basis for believing that the statement is correct and not misleading. With respect to both oral and written statements of fact, we follow our historical definition of misrepresentation and lack of candor, which defined as misconduct incorrect and misleading statements where there was an actual intent to deceive the Commission. We continue to believe that the rule barring such intentional deceptions, whether by affirmative misstatements or by omissions of material facts, should apply, in appropriate contexts, to both oral and written material statements of fact. We believe that in preparing written statements in fact-based adjudications and investigations, regulatees are on heightened notice that they must have a reasonable basis to believe that what they say is correct and not misleading. In these circumstances, we consider it justified to require that parties use due diligence in providing information that

is correct and not misleading to the Commission, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted. A failure to exercise such reasonable diligence would mean that the party did not have a reasonable basis for believing in the truthfulness of the information.

5. Additionally, we wish to clarify that our reference to "materiality" and "Commission jurisdiction" in the rule is intended only to indicate that the representations and omissions we are concerned about are those material¹ to the issues before the Commission and that we do not intend the rule to apply to representations or omissions that are insignificant or extraneous to the issues.

6. We also take three subsidiary actions. First, our amendment of § 1.17 warrants making conforming amendments to 47 CFR 73.1015 and 47 CFR 76.939. Section 73.1015 is the counterpart of § 1.17 applicable specifically to the broadcast service. Section 76.939 applies specifically to cable operators. We see no purpose in having multiple sections contain redundant provisions. Accordingly, we amend §§ 73.1015 and 76.939 to cross reference § 1.17. Second, our revision of the rule makes unnecessary the language contained in the first paragraph of the former rule. The authority of the Commission to obtain information is set forth in various statutory provisions, for example, 47 U.S.C. 218, 308(b), 403, and does not need to be reiterated in the rule. Third, commenter James A. Kay, Jr. (Kay) attaches to his comments a copy of a petition for rulemaking filed March 5, 2002. In his petition, Kay proposes several modifications to the Commission's investigatory and hearing procedures. We have examined Kay's proposals and find them without merit. Several of Kay's proposals would unduly burden the Commission's investigatory and hearing functions. Other matters are already adequately addressed by existing law and policy. We will therefore deny the petition.

Final Regulatory Flexibility Certification

7. The Regulatory Flexibility Act of 1980, as amended (*see* 5 U.S.C. 601 *et*

¹ "Material" has been defined as "important," "more or less necessary," "having influence or effect." *See McDonald v. Murray*, 515 P.2d 151, 152 (Wash. 1973). Additionally, a "material representation" has been defined as one "relating to matter which is so substantial or important as to influence the party to whom it is made." *See In the Matter of Mark E. Wagner*, 744 N.E.2d 418, 421 (Ind. 2001).

seq.)² requires a final regulatory flexibility analysis in a notice and comment rulemaking proceeding unless we certify that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). We believe that the rule we adopt today will not have a significant economic impact on a substantial number of small entities.

8. In expanding the scope of 47 CFR 1.17, we are merely requiring persons subject to the Commission’s regulatory jurisdiction to submit information that is correct and not misleading. The revised rule thus does not impose any significant compliance burden on persons dealing with the Commission, including small entities, or otherwise affect the rights of persons participating in Commission proceedings. The revised rule simply enables the Commission to impose sanctions more effectively in those instances where people intentionally or negligently submit incorrect or misleading information. There is thus no reason to believe that operation of the revised rule would impose significant costs on parties to Commission proceedings.

9. Accordingly, we certify that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The Commission shall send a copy of this Report and Order, including this certification, to the Chief Counsel for Advocacy of the SBA. 5 U.S.C. 605(b).

10. 47 CFR. 1.17, 73.1015, and 76.939 are amended as set forth in the rule changes.

11. The Commission’s Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

12. The Petition for Rulemaking, filed March 5, 2002, by James A. Kay, Jr. is denied.

List of Subjects in 47 CFR Parts 1, 73, and 76

Administrative practice and procedure, Radio, Telecommunications, Television.

² See 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 73 and 76 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

■ 2. Section 1.17 is revised to read as follows:

§ 1.17 Truthful and accurate statements to the Commission.

(a) In any investigatory or adjudicatory matter within the Commission’s jurisdiction (including, but not limited to, any informal adjudication or informal investigation but excluding any declaratory ruling proceeding) and in any proceeding to amend the FM or Television Table of Allotments (with respect to expressions of interest) or any tariff proceeding, no person subject to this rule shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.

(b) For purpose of paragraph (a) of this section, “persons subject to this rule” shall mean the following:

(1) Any applicant for any Commission authorization;

(2) Any holder of any Commission authorization, whether by application or by blanket authorization or other rule;

(3) Any person performing without Commission authorization an activity that requires Commission authorization;

(4) Any person that has received a citation or a letter of inquiry from the Commission or its staff, or is otherwise the subject of a Commission or staff investigation, including an informal investigation;

(5) In a proceeding to amend the FM or Television Table of Allotments, any

person filing an expression of interest; and

(6) To the extent not already covered in this paragraph (b), any cable operator or common carrier.

PART 73—RADIO BROADCAST SERVICES

■ 3. The authority citation for part 73 continues to read as follows:

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

■ 4. Section 73.1015 is revised to read as follows:

§ 73.1015 Truthful written statements and responses to Commission inquiries and correspondence.

The Commission or its representatives may, in writing, require from any applicant, permittee, or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked, or to any other matter within the jurisdiction of the Commission, or, in the case of a proceeding to amend the FM or Television Table of Allotments, require from any person filing an expression of interest, written statements of fact relevant to that allotment proceeding. Any such statements of fact are subject to the provisions of § 1.17 of this chapter.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 5. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303A, 307, 308, 309, 312, 315, 317, 325, 338, 339, 503, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544A, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, AND 573 unless otherwise noted.

■ 6. Section 76.939 is revised to read as follows:

§ 76.939 Truthful written statements and responses to requests of franchising authority.

Cable operators shall comply with franchising authorities’ and the Commission’s requests for information, orders, and decisions. Any information submitted to a franchising authority or the Commission in making a rate determination pursuant to an FCC Form 393 (and/or FCC Forms 1200/1205) filing or a cost-of-service showing is subject to the provisions of § 1.17 of this chapter.

[FR Doc. 03-7462 Filed 3-27-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 03-779; MB Docket No. 02-322, RM-10584]

Radio Broadcasting Services; Opelousas, Louisiana**AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: The Audio Division, at the request of Opelousas Radio Broadcasters, allots Channel 279A to Opelousas, Louisiana, as the community's third FM commercial aural transmission service. See 67 FR 66377, October 31, 2002. Channel 279A can be allotted to Opelousas in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.3 kilometers (4.6 miles) south of the community. The reference coordinates for Channel 279A at Opelousas are 30-28-18 North Latitude and 92-03-14 West Longitude. A filing window for Channel 279A at Opelousas, Louisiana, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective April 28, 2003.**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket Nos. 02-322, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court

review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Channel 279A at Opelousas.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03-7463 Filed 3-27-03; 8:45 am]

BILLING CODE 6712-01-P**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 03-588; MM Docket No. 01-132; RM-10149]

Radio Broadcasting Services; Junction, Texas**AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 66 FR 35406 (July 5, 2001) in this proceeding, this Report and Order allots Channel 297A to Junction Texas and provides Junction with its third local aural transmission service. The coordinates for Channel 297A at Junction are 30-27-27 North Latitude and 99-46-07 West Longitude, with a site restriction of 3.5 kilometers (2.2 miles) south of Junction.

DATES: Effective April 28, 2003.**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01-132, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal

business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202 863-2893, facsimile 202 863-2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 reads as follows:

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 297A at Junction.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03-7464 Filed 3-27-03; 8:45 am]

BILLING CODE 6712-01-P**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 03-630; MM Docket No. 01-111; RM-10124, RM-10341]

Radio Broadcasting Services; Alamo and Milan, Georgia**AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 66 FR 30366 (June 6, 2001) this *Report and Order* allots Channel 287C3 to Alamo, Georgia, and provides Alamo with its first local aural transmission service. This document also denies a mutually exclusive application filed by Tel-Dodge Broadcasting Co. ("Tel-Dodge"), licensee of Station WMCG(FM), Milan Georgia to change its transmitter site. The Commission compared the merits of Radio East Corp's rulemaking petition that proposed the allotment of Channel 287C3 to Alamo with those of Tel-Dodge's application, pursuant to the Commission's *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The Commission

preferred the rulemaking petition. The coordinates for Channel 287C3 at Alamo are 32–19–29 North Latitude and 82–43–23 West Longitude. This allotment has a site restriction of 20.4 kilometers (12.7 miles) north of Alamo.

DATES: Effective April 28, 2003.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–111, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202 863–2893, facsimile 202 863–2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 reads as follows:

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Alamo, Channel 287C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division Media Bureau.

[FR Doc. 03–7470 Filed 3–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–629; MB Docket No. 02–120; RM–10442]

Radio Broadcasting Services; Owen, Wisconsin

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Starboard Broadcasting, Inc.,

allots Channel 242C3 at Owen, Wisconsin, as the community's first local FM service. Channel 242C3 can be allotted to Owen, Wisconsin, in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.9 km (8.0 miles) northeast of Owen. The coordinates for Channel 242C3 at Owen, Wisconsin, are 45–03–08 North Latitude and 90–29–21 West Longitude. A filing window for Channel 242C3 at Owen, WI, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

DATES: Effective April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–120, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Owen, Channel 242C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–7472 Filed 3–27–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter IV

[Docket No. 000214043–2227–02; I.D. 011603A]

RIN 1018–AF55, 0648–XA48

Policy for Evaluation of Conservation Efforts When Making Listing Decisions

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Announcement of final policy.

SUMMARY: We, the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (the Services), announce a final policy for the evaluation of conservation efforts when making listing decisions (PECE) under the Endangered Species Act of 1973, as amended (Act). While the Act requires us to take into account all conservation efforts being made to protect a species, the policy identifies criteria we will use in determining whether formalized conservation efforts that have yet to be implemented or to show effectiveness contribute to making listing a species as threatened or endangered unnecessary. The policy applies to conservation efforts identified in conservation agreements, conservation plans, management plans, or similar documents developed by Federal agencies, State and local governments, Tribal governments, businesses, organizations, and individuals.

DATES: This policy is effective April 28, 2003.

ADDRESSES: Chief, Division of Conservation and Classification, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203 (Telephone 703/358–2171, Facsimile 703/358–1735); or Chief, Endangered Species Division, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910 (Telephone 301/713–1401, Facsimile 301/713–0376).

FOR FURTHER INFORMATION CONTACT: Chris Nolin, Chief, Division of Conservation and Classification, U.S. Fish and Wildlife Service at the above address, telephone 703/358–2171 or facsimile 703/358–1735, or Margaret Lorenz, Endangered Species Division, National Marine Fisheries Service at the

above address, telephone 301/713-1401 or facsimile 301/713-0376.

SUPPLEMENTARY INFORMATION:

Background

This policy provides direction to Service personnel in determining how to consider a conservation agreement when making a decision on whether a species warrants listing under the Act. It also provides information to the groups interested in developing agreements or plans that would contribute to making it unnecessary for the Services to list a species under the Act.

On June 13, 2000, we published in the *Federal Register* (65 FR 37102) a draft policy for evaluating conservation efforts that have not yet been implemented or have not yet demonstrated effectiveness when making listing decisions under the Act. The policy establishes two basic criteria: (1) The certainty that the conservation efforts will be implemented and (2) the certainty that the efforts will be effective. The policy provides specific factors under these two basic criteria that we will use to direct our analysis of the conservation effort. At the time of making listing determinations, we will evaluate formalized conservation efforts (i.e., conservation efforts identified in a conservation agreement, conservation plan, management plan, or similar document) to determine if the conservation effort provides certainty of implementation and effectiveness and, thereby, improves the status, as defined by the Act, of the species such that it does not meet the Act's definition of a threatened or endangered species.

When we evaluate the certainty of whether the formalized conservation effort will be implemented, we will consider the following: Do we have a high level of certainty that the resources necessary to carry out the conservation effort are available? Do the parties to the conservation effort have the authority to carry it out? Are the regulatory or procedural mechanisms in place to carry out the efforts? And is there a schedule for completing and evaluating the efforts? If the conservation effort relies on voluntary participation, we will evaluate whether the incentives that are included in the conservation effort will ensure the level of participation necessary to carry out the conservation effort. We will also evaluate the certainty that the conservation effort will be effective. In making this evaluation, we will consider the following: Does the effort describe the nature and extent of the threats to the species to be addressed and how these threats are reduced by

the conservation effort? Does the effort establish specific conservation objectives? Does the effort identify the appropriate steps to reduce threats to the species? And does the effort include quantifiable performance measures to monitor for both compliance and effectiveness? Overall, we need to be certain that the formalized conservation effort improves the status of the species at the time we make a listing determination.

This policy is important because it gives us a consistent set of criteria to evaluate formalized conservation efforts. For states and other entities that are developing agreements or plans, this policy informs them of the criteria we will use in evaluating formalized conservation efforts when making listing decisions, and thereby guides States and other entities that wish to develop formalized conservation efforts that may contribute to making listing unnecessary.

In the notice of the draft policy, we specifically requested comments on the criteria that we would use to evaluate the certainty that a formalized conservation effort will be implemented. Also, we requested comments on the timing of the development of conservation agreements or plans. We have learned that timing is the most critical element when developing a successful conservation agreement or plan. Encouraging and facilitating early development of conservation agreements or plans is an important objective of this policy. Last-minute agreements (i.e., those that are developed just before or after a species is proposed for listing) often have little chance of affecting the outcome of a listing decision. Once a species is proposed for listing under the Act, we may have insufficient time to include consideration of a newly developed conservation plan in the public notice and comment process and still meet our statutory deadlines. Last-minute efforts are also less likely to be able to demonstrate that they will be implemented and effective in reducing or removing threats to the species. In addition, there are circumstances in which the threats to a species are so imminent and/or complex that it will be almost impossible to develop an agreement or plan that includes conservation efforts that will result in making the listing unnecessary. Accordingly, we encourage the early development of formalized conservation efforts before the threats become too extreme and imminent and when there is greater flexibility in sufficiently improving a species' status to the point

where listing the species as threatened or endangered is unnecessary.

Summary of Comments and Recommendations

In response to our request for comments on the draft policy, we received letters from 44 entities. Thirty-five were in support of the policy and nine were against. We reviewed all comments received and have incorporated accepted suggestions or clarifications into the final policy text. Because most of these letters included similar comments (several were form letters) we grouped the comments according to issues. The following is a summary of the relevant comments and our responses. We also received comments that were not relevant to the policy and, therefore, outside the policy's scope. We responded to some of these comments where doing so would clarify the process for determining whether a species is endangered or threatened (the listing process) or clarify the nature of conservation plans, agreements, and efforts.

Policy Scope Issues

Issue 1: Many commenters felt that this policy should also apply to downlisting species from endangered to threatened status and delisting actions, or else parties to an agreement where the final decision is to list the species would not have any incentives to take action on a listed species until a recovery plan is developed. In addition, one commenter suggested that the policy scope should be expanded to include the process of designating critical habitat.

Response 1: We believe that the immediate need is to develop criteria that will guide consistent and predictable evaluation of conservation efforts at the time of a listing determination. We may consider such a policy for downlisting or delisting actions in the future. However, we note that a recovery plan is the appropriate vehicle to provide guidance on actions necessary to delist a species. Also, we may consider developing a similar policy for critical habitat designations.

Issue 2: Two commenters stated that our estimates of time needed to develop, implement, monitor, and report on conservation efforts are underestimated.

Response 2: We agree that our original estimates were too low. We have increased our estimate to an average of 2,500 person-hours to complete a conservation agreement (with a range of 1,000 to 4,000 person-hours). We also increased our estimate of the average number of person-hours to conduct monitoring and to prepare a report to

320 and 80 hours, respectively. We expect the amount of time will vary depending on several factors including, but not limited to, the number of species addressed, amount of biological information available on the species, and the complexity of the threats. Therefore, we have provided an average to assist interested parties in their planning efforts.

Issue 3: One commenter questioned whether we would evaluate proposed agreements or plans using the stated criteria automatically or only upon request. The commenter also questioned whether we will consider agreements or plans that we previously determined were not sufficient to prevent the need for listing in combination with "new" proposed agreements or plans when we evaluate whether to list a species.

Response 3: If a listing proposal is under review, we will consider any conservation effort. We will evaluate the status of the species in the context of all factors that affect the species' risk of extinction, including all known conservation efforts whether planned, under way, or fully implemented. However, for formalized conservation efforts not fully implemented, or where the results have not been demonstrated, we will consider the PECE criteria in our evaluation of whether, and to what extent, the formalized conservation efforts affect the species' status under the Act.

Issue 4: One commenter asked the length of time for which a plan is approved.

Response 4: The PECE is not a plan-approval process, nor does it establish an alternative to listing. PECE outlines the criteria we will consider when evaluating formalized conservation efforts that have not yet been fully implemented or do not yet have a record of effectiveness at the time we make a listing decision. Should the status of a species decline after we make a decision not to list this species, we would need to reassess our listing decision. For example, there may be situations where the parties to a plan or agreement meet their commitments, but unexpected and/or increased threats (e.g., disease) may occur that threaten the species' status and make it necessary to list the species.

Issue 5: One commenter asked if the "new information" reopener is operative at any time.

Response 5: Yes, because section 4(b)(1) of the Act requires us to use the best available scientific and commercial data whenever making decisions during the listing process. In making a decision whether to list a species, we will take into account all available information,

including new information regarding formalized conservation efforts. If we receive new information on a formalized conservation effort that has not yet been implemented or not yet demonstrated effectiveness prior to making a listing decision, we will evaluate the conservation effort in the context of the PECE criteria. If we receive new information on such an effort after we have decided to list a species, then we will consider this new information along with other measures that reduce threats to the species and may use this information in downlisting the species from endangered to threatened status or delisting. However, PECE will not control our analysis of the downlisting of the species.

Issue 6: One commenter stated that it is unrealistic and unreasonable to expect agreements to be in place at the time the conservation effort is evaluated. In addition, the commenter stated that it is particularly unrealistic and unreasonable to expect that conservation agreements or plans be submitted within 60 days of publication of a proposed rule.

Response 6: We strongly encourage parties to initiate formalized conservation efforts prior to publication of a proposal to list a species under the Act. If a formalized conservation effort is submitted during the public comment period for a proposed rule, and may be significant to the listing decision, then we may extend or reopen the comment period to allow time for comment on the new conservation effort. However, we can extend the public comment period only if doing so does not prevent us from completing the final listing action within the statutory timeframe.

Issue 7: One commenter stated that most existing conservation agreements are ineffective, and furthermore that we are unable to determine their effectiveness for several years.

Response 7: We agree that it could take several years for some conservation efforts to demonstrate results. However, the PECE criteria provide the framework for us to evaluate the likely effectiveness of such formalized conservation efforts. Some existing conservation efforts have proven to be very effective and have justifiably influenced our listing decisions.

Issue 8: Several commenters stated that funds are better spent to list species, designate critical habitat, and implement recovery efforts rather than to develop conservation agreements.

Response 8: Conservation agreements can be seen as early recovery efforts. Early conservation efforts to improve the status of a species before listing is necessary may cost less than if the

species' status has already been reduced to the point where it needs to be listed. Early conservation of candidate species can reduce threats and stabilize or increase populations sufficiently to allow us to use our resources for species in greater need of the Act's protective measures.

Issue 9: Some commenters questioned the 14 conservation agreements that we cited which contributed to making listing the covered species as threatened or endangered unnecessary. Commenters requested information on each plan to better allow the public to evaluate the adequacy of the agreements.

Response 9: We referenced the 14 conservation agreements in the Paperwork Reduction Act section of the draft policy and used them solely to estimate the information collection and recordkeeping burden that would result from our draft policy if it were made final. Therefore, we do not recommend using these to comment on the new policy.

Biological Issues

Issue 10: One commenter questioned our method for evaluating a conservation plan that addresses only a portion of a species' range.

Response 10: Using the PECE criteria, we will evaluate all formalized conservation efforts that have yet to be implemented or have yet to demonstrate results at the time we make our listing decision. This is true for efforts that are applicable to all or only a portion of the species' range. The PECE does not set standards for how much conservation is needed to make listing unnecessary. The significance of plans that address only a portion of a species' range will be evaluated in the context of the species' overall status. While a formalized conservation effort may be effective in reducing or removing threats in a portion of the species' range, that may or may not be sufficient to remove the need to list the species as threatened or endangered. In some cases, the conservation effort may lead to a determination that a species warrants threatened status rather than endangered.

In addition, parties may have entered into agreements to obtain assurances that no additional commitments or restrictions will be required if the species is listed. A landowner or other non-Federal entity can enter into a Candidate Conservation Agreement with Assurances (CCAA) (64 FR 32726, June 17, 1999), which are formal agreements between us and one or more non-Federal parties that address the conservation needs of proposed or

candidate species, or species likely to become candidates. These agreements provide assurances to non-Federal property owners who voluntarily agree to manage their lands or waters to remove threats to candidate or proposed species, or to species likely to become candidates. The assurances are authorized under the CCAA regulations (50 CFR 17.22(d)(5) and 17.32(d)(5)) and provide non-Federal property owners assurances that their conservation efforts will not result in future regulatory obligations in excess of those they agree to at the time they enter into the Agreement. Should the species eventually be listed under the Act, landowners will not be subjected to increased property use restrictions as long as they conform to the terms of the agreement. While one of these agreements may not remove the need to list, several such agreements, covering a large portion of the species' range, may.

Issue 11: Several commenters suggested that the Services should consider conservation efforts developed for species other than the species for which a listing decision is being made when the species have similar biological requirements and the conservation effort addresses protection of habitat of the species for which a listing decision is being made.

Response 11: We agree. When a decision whether or not to list a species is being made, we will consider all conservation efforts that reduce or remove threats to the species under review, including conservation efforts developed for other species. However, for all formalized conservation efforts that have not yet been implemented or have yet to demonstrate results, we will use the PECE criteria to evaluate the conservation effort for certainty of implementation and effectiveness for the species subject to the listing decision.

Issue 12: One commenter stated the "biology/natural history" of the species should be adequately known and explained in order to evaluate the effectiveness of the effort.

Response 12: When we consider the elements under the effectiveness criterion, we will evaluate whether the formalized conservation effort incorporates the best available information on the species' biology and natural history. However, due to variation in the amount of information available about different species and the threats to their existence, the level of information necessary to provide a high level of certainty that the effort will be effective will vary.

We believe it is important, however, to start conservation efforts as early as

possible even if complete biological information is lacking. Regardless of the extent of biological information we have about a species, there will almost always be some uncertainty about threats and the most effective mechanisms for improving the status of a species. We will include the extent of gaps in the available information in our evaluation of the level of certainty that the formalized conservation effort will be effective. One method of addressing uncertainty and accommodating new information is the use of monitoring and the application of adaptive management principles. The PECE criteria note that describing the threats and how those threats will be removed, including the use of monitoring and adaptive management principles, as appropriate, is critical to determining that a conservation effort that has yet to demonstrate results has reduced or removed a particular threat to a species.

Issue 13: Several commenters suggested that affected party(ies) should work with the Services to identify species that will be proposed for listing in the near future to help concentrate and direct efforts to those species that most warrant the protection, and help make the party(ies) aware of when and what actions should be taken to help conserve species in need.

Response 13: We do identify species in need of protection. The FWS publishes a Candidate Notice of Review (CNOR) in which the FWS identifies those species of plants and animals for which they have sufficient information on the species' biological status and threats to propose them as endangered or threatened under the Act, but for which development of a proposed listing regulation is precluded by other higher priority listing activities. NMFS, which has jurisdiction over marine species and some anadromous species, defines candidate species more broadly to include species whose status is of concern but more information is needed before they can be proposed for listing. NMFS candidate species can be found on their web site at <http://www.nmfs.noaa.gov>. The FWS's CNOR is published in the **Federal Register** and can also be found on their web site at <http://endangered.fws.gov>.

We agree that it is important to start developing and implementing conservation efforts and coordinating those efforts with us as early as possible. Early conservation helps preserve management options, minimizes the cost of reducing threats to a species, and reduces the potential for land use restrictions in the future. Addressing the needs of species before the regulatory protections associated with listing

under the Act come into play often allows greater management flexibility in the actions necessary to stabilize or restore these species and their habitats. Early implementation of conservation efforts may reduce the risk of extinction for some species, thus eliminating the need for them to be listed as threatened or endangered.

Issue 14: One commenter stated that requiring an implementation schedule/timeline for conservation objectives is not feasible when baseline data on a species is poorly understood. The policy should recognize that variation in patterns of species distribution and land ownership will cause variation in the difficulty of developing conservation efforts. Thus, some conservation efforts should be allotted more time for their completion.

Response 14: Biological uncertainty is a common feature of any conservation effort. Nevertheless, some conservation actions can proceed even when information on the species is incomplete. Implementation schedules are an important element of all formalized conservation planning efforts (e.g., recovery plans). The implementation schedule identified in PECE criterion A.8. establishes a timeframe with incremental completion dates for specific tasks. In light of the information gaps that may exist for some species or actions, schedules for completing certain tasks may require revision in response to new information, changing circumstances, and the application of adaptive management principles. Including an implementation schedule in a formalized conservation effort is critical to determining that the effort will be implemented and effective and has improved the status of the species under the Act at the time we make our listing determination.

We acknowledge that the amount of time required to develop and implement formalized conservation efforts will vary. Therefore, we encourage early development and implementation of conservation efforts for species that have not yet become candidates for listing and for those species that are already candidates. This policy does not dictate timeframes for completing conservation efforts. However, the Act mandates specific timeframes for many listing decisions, and we cannot delay final listing actions to allow for the development and signing of a conservation agreement or plan. We and participants must also acknowledge that, for species that are poorly known, or whose threats are not well understood, it is unlikely that conservation efforts that have not been implemented or that have yet to yield

results will have improved the status of the species sufficiently to play a significant role in the listing decision.

Issue 15: One commenter stated that the Services, when evaluating the certainty of conservation efforts while making listing decisions, should factor into the analysis the Services' ability to open or reopen the listing process at any time, and to list the species on an emergency basis if necessary.

Response 15: We will initiate or revisit a listing decision if information indicates that doing so is warranted, and on an emergency basis if there is an imminent threat to the species' well-being. However, we do not make any listing determinations based on our ability to change our decisions. We base our listing decisions on the status of the species at that time, not on some time in the future.

Criteria Issues

Issue 16: Several commenters requested that we further explain the criteria for both implementation and effectiveness. The commenters claim that our criteria are too vague and are subject to interpretation by the Services. One commenter said that, by stating "this list should not be considered comprehensive evaluation criteria," the policy allows the Services to consider criteria not addressed in the agreement, and allows for too much leeway for the Services to reject conservation efforts of an agreement, even if all criteria listed in the draft policy are satisfied.

Response 16: PECE establishes a set of criteria for us to consider when evaluating formalized conservation efforts that have not yet been implemented or have not yet demonstrated effectiveness to determine if the efforts have improved the status of the species. At the time of the listing decision, we must find, with minimal uncertainty, that a particular formalized conservation effort will be implemented and will be effective, in order to find that the effort has positively affected the conservation status of a species. Meeting these criteria does not create an approval process. Some conservation efforts will address these criteria more thoroughly than others. Because, in part, circumstances vary greatly among species, we must evaluate all conservation efforts on a case-by-case basis at the time of listing, taking into account any and all factors relevant to whether the conservation effort will be implemented and effective.

Similarly, the list of criteria is not comprehensive because the conservation needs of species will vary greatly and depend on species-specific, habitat-specific, location-specific, and

action-specific factors. Because conservation needs vary, it is not possible to state all of the factors that might determine the ultimate effectiveness of formalized conservation efforts. The species-specific circumstances will also determine the amount of information necessary to satisfy these criteria. Evaluating the certainty of the effectiveness of a formalized conservation effort necessarily includes an evaluation of the technical adequacy of the effort. For example, the effectiveness of creating a wetland for species conservation will depend on soil texture, hydrology, water chemistry, and other factors. Listing all of the factors that we would appropriately consider in evaluations of technical adequacy is not possible.

Issue 17: One commenter suggested that we consider conservation plans in the development stage rather than waiting until finalized due to the possible benefits that may result from initial efforts.

Response 17: Plans that have not been finalized and, therefore, do not conform to the PECE criteria, may have some conservation value for the species. For example, in the process of developing a plan, participants and the public may become more informed about the species and its conservation needs. We will consider any benefits to a species that have accrued prior to the completion of an agreement or plan in our listing decision, under section 4(b)(1)(A) of the Act. However, the mere existence of a planning process does not provide sufficient certainty to actually improve the status of a species. The criteria of PECE set a rigorous standard for analysis and assure a high level of certainty associated with formalized conservation efforts that have not been implemented, or have yet to yield results, in order to determine that the status of the species has improved.

We encourage parties to involve the appropriate Service during the development stage of all conservation plans, whether or not they are finalized prior to a listing decision. Sharing of the best available information can lead to developing better agreements. In the event that the focus species is listed, these planning efforts can be utilized as the basis for development of Safe Harbor Agreements or Habitat Conservation Plans, through which we can permit incidental take under Section 10(a) of the Act, or provide a basis for a recovery plan.

Issue 18: Several commenters stated that the policy should provide more sufficient, clear criteria by which the implementation and effectiveness of conservation efforts is monitored and

assessed. One commenter also suggested that we require a specific reporting format to help show effectiveness of conservation efforts.

Response 18: When evaluating formalized conservation efforts under PECE, we will consider whether the effort contains provisions for monitoring and reporting implementation and effectiveness results (see criterion B.5).

Regarding a standard reporting format, the nature of the formalized conservation efforts we evaluate will probably vary a great deal. Efforts may range from complex to single-threat approaches. Therefore, for us to adopt a one-size-fits-all approach to report on monitoring efforts and results would be inappropriate.

Issue 19: One commenter stated that PECE is too demanding with respect to identification and commitment of resources "up-front," and that these strict requirements and commitments on conservation efforts harm the voluntary nature of agreements.

Response 19: Addressing the resources necessary to carry out a conservation effort is central to establishing certainty of plan implementation and effectiveness. Accordingly, we believe that PECE must establish a minimum standard to assure certainty of implementation and effectiveness. This certainty is necessary in determining whether the conservation effort has improved the status of species.

It is our intention and belief that the PECE criteria will actually increase the voluntary participation in conservation agreements by increasing the likelihood that parties' voluntary efforts and commitments that have yet to be implemented or have yet to demonstrate results will play a role in a listing decision.

Issues Related to Specific Changes

Several commenters recommended specific changes to the evaluation criteria. The recommended additions in language to the criteria are italicized and deletions are shown in strikeout to help the reader identify the proposed changes.

Issue 20: Commenters stated that there is potential confusion between evaluation criteria A.2. (authority) and A.3.(authorization) as they believed some Service staff may have difficulty distinguishing between an "authority," and an "authorization." To help eliminate this potential confusion, commenters requested that criterion A.2. be changed to read: "the legal authority of the party(ies) to the agreement or plan to implement the conservation effort and the legal

procedural requirements necessary to implement the effort are described.” They also requested that we change criterion A.3. to read: The legal requirements (e.g. permits, environmental review documents) necessary to implement the conservation effort are identified, and an explanation of how the party(ies) to the agreement or plan that will implement the effort will fulfill these requirements is provided.”

Response 20: We agree with adding the word “legal” and also have incorporated additional language and separated this criterion (former criterion A.2) into two criteria (A.2. and A.3.). Evaluation Criterion A.2. now reads, “The legal authority of the party(ies) to the agreement or plan to implement the formalized conservation effort, and the commitment to proceed with the conservation effort are described.” New evaluation Criterion A.3. reads, “The legal procedural requirements necessary to implement the effort are described, and information is provided indicating that fulfillment of these requirements does not preclude commitment to the effort.” In making these changes, we recognize that there may be overlap between new criterion A.3. and the criterion on authorizations (now A.4.), but our intent is to separate a criterion on procedural requirements from substantive authorizations (e.g. permits). We believe that we need to specifically determine that the parties to the agreement will obtain the necessary authorizations. We also recognize that parties may not be able to commit to some conservation efforts until they have fulfilled procedural requirements (e.g. under the National Environmental Policy Act) since some laws preclude commitment to a specific action until certain procedures are completed. Additionally, in creating a new criterion A.3., we find it unnecessary to incorporate the suggested changes to old A.3. (now A.4.).

Issue 21: Commenters requested the following change to Criterion A.4. (now Criterion A.5.): “The level of voluntary participation (e.g., permission to enter private land or other contributions by private landowners) necessary to implement the conservation effort is identified, and an explanation of how the party(ies) to the agreement or plan that will implement the conservation effort will obtain that level of voluntary participation is provided (e.g., an explanation of why incentives to be provided are expected to result in the necessary level of voluntary participation)”.

Response 21: We do not believe that including “an explanation of how the

party(ies) * * * will obtain that level of voluntary participation * * *” will provide us with enough information in order to determine that necessary voluntary participation will, in fact, be obtained. Evaluation Criterion A.5. (formerly A.4.) now reads: “The type and level of voluntary participation (e.g., number of landowners allowing entry to their land, or number of participants agreeing to change timber management practices and acreage involved) necessary to implement the conservation effort is identified, and a high level of certainty is provided that the party(ies) to the agreement or plan that will implement the conservation effort will obtain that level of voluntary participation (e.g., an explanation of how incentives to be provided will result in the necessary level of voluntary participation).”

Issue 22: Commenters suggested that Evaluation Criterion A.5. (now criterion A.6.) be changed to read as “Any statutory or regulatory deficiency or barrier to implementation of the conservation effort is identified and an explanation of how the party(ies) to the agreement or plan that will implement the effort will resolve the deficiency or barriers is provided.”

Response 22: We do not agree with the suggested language change. We believe that all regulatory mechanisms, including statutory authorities, must be in place to ensure a high level of certainty that the conservation effort will be implemented.

Issue 23: The suggested change to Evaluation Criterion A.6. (now A.7.) is “A fiscal schedule and plan is provided for the conservation effort, including a description of the obligations of party(ies) to the agreement or plan that will implement the conservation effort, and an explanation of how they will obtain the necessary funding is provided.”

Response 23: We do not agree with the suggested language change since we believe that there must be a high level of certainty that the party(ies) will obtain the necessary funding to implement the effort. While we agree that including a fiscal schedule, a description of the obligations of the party(ies), and an explanation of how they will obtain the funding is important, this information, by itself, does not provide enough certainty for us to consider a formalized conservation effort that has not yet been implemented as contributing to a listing decision. Also see our response to Issue 41.

Issue 24: One commenter suggested that the Services should consider an incremental approach to evaluating

implementation dates for the conservation effort.

Response 24: We agree with the commenter’s suggested change. Evaluation Criterion A.8. (formerly A.7.) now reads as: “An implementation schedule (including incremental completion dates) for the conservation effort is provided.”

Issue 25: Commenters suggested that Criterion A.8. (now A.9.) be revised to read: “The conservation agreement or plan that includes the conservation effort include a commitment by the party(ies) to apply their legal authorities and available resources as provided in the agreement or plan.”

Response 25: The participation of the parties through a written agreement or plan establishes each party’s commitment to apply their authorities and resources to implementation of each conservation effort. Therefore, it is unnecessary to include the suggested language; criterion A.9. (formerly A.8.) remains unchanged.

Issue 26: A commenter also suggested adding a criterion: “Evidence that other conservation efforts have been implemented for sympatric species within the same ecosystem that may provide benefits to the subject species is provided.”

Response 26: We do not think it is necessary to add such a criterion. At the time of listing, we will take into consideration all relevant information, including the effect of other conservation efforts for sympatric species on the status of the species we are considering for listing.

Issue 27: Several commenters recommended that we make specific changes to the Criterion B.1. language to read as: “The nature and extent of threats being addressed by the conservation effort are described, and how the conservation effort will reduce the threats are defined.” In addition, commenters suggested we change Criterion B.2. to read as: “Explicit incremental objectives for the conservation effort and dates for achieving them should be stated.”

Response 27: We agree that, in addition to identifying threats, the plan should explain how formalized conservation efforts reduce threats to the species. Therefore, Evaluation Criterion B.1. now reads as: “The nature and extent of threats being addressed by the conservation effort are described, and how the conservation effort reduces the threats is described.” We agree that conservation efforts should include incremental objectives. This allows the parties to evaluate progress toward the overall goal of a conservation effort, which is essential for adaptive

management. In addition, setting and achieving interim objectives is helpful in maintaining support for the effort. Therefore, Evaluation Criterion B.2. now reads as: "Explicit incremental objectives for the conservation effort and dates for achieving them are stated."

Issue 28: Some commenters recommended that the party's (ies') prior record with respect to development and implementation of conservation efforts be recognized towards their credibility and reliability to implement future conservation efforts. A commenter also suggested adding a criterion to read as: "Demonstrated ability of the party(ies) to develop and implement effective conservation efforts for this or other species and habitats." Another comment suggested that the history and momentum of a program should be taken into account (e.g., watershed council programs) when considering the certainty of effectiveness and implementation. These considerations would help ensure a high level of certainty that regulatory mechanisms, funding authorizations, and voluntary participation will be adopted by a specified date adequate to provide certainty of implementation.

Response 28: Although it would be beneficial for the party(ies) to demonstrate their past abilities to implement effective formalized conservation efforts for the focus species or other species and habitats, we do not believe that this is necessary to demonstrate a high level of certainty that the conservation effort will be implemented. In addition, a criterion that emphasizes previous experience in implementing conservation efforts may limit formalized conservation efforts to only those party(ies) that have a track record and would unjustifiably constrain consideration of efforts by those who do not satisfy this criterion. Such parties can provide certainty in other ways. We agree that a party's (ies') prior record and history with respect to implementation of conservation efforts should be recognized towards their credibility and reliability. Information concerning a party's experience in implementing conservation efforts may be useful in evaluating how their conservation effort satisfies the PECE criteria. The momentum of a project is a good indication of the progress that is being made towards a party's (ies') conservation efforts, but momentum can decrease, and thus cannot be solely relied upon to determine the certainty that a formalized conservation effort will be implemented or effective.

Issue 29: One commenter stated that our use of "must" in meeting the criteria is inappropriate in the context of a policy, and the policy should rather be treated as guidance.

Response 29: The only mandatory statements in the policy refer to findings that we must make. In order for us to find that a particular formalized conservation effort has improved the status of the species, we must be certain that the formalized conservation effort will be implemented and will be effective. No party is required to take any action under this policy. Rather the policy provides us guidance on how we will evaluate formalized conservation efforts that have yet to be implemented or have yet to demonstrate effectiveness at the time of our listing decision.

Legal Issues

Issue 30: Many commenters mentioned past litigation (i.e., decisions on coho salmon and Barton Springs salamander) in which the courts have ruled against the Services in cases that have involved Candidate Conservation Agreements or other conservation efforts, and question how the PECE policy addresses this issue. Commenters question how this policy will keep the Services from relying on speculative conservation efforts.

Response 30: We referenced past adverse decisions when we published the draft policy. The purpose of PECE, in part, is to address situations similar to those in which some courts found past conservation efforts insufficient. We developed the PECE to establish a set of consistent standards for evaluating certain formalized conservation efforts at the time of a listing decision and to ensure with a high level of certainty that formalized conservation efforts will be implemented and effective. We agree that we may not rely on speculative promises of future action when making listing decisions.

Issue 31: Several commenters questioned the legality of considering private party's (ies') input when section 4(b)(1)(A) of the Act states " * * * and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species * * *" In addition, commenters stated that the PECE policy is inconsistent with the plain language and the congressional intent of the Act by allowing agencies to evaluate any private measures. They also stated that this was inconsistent with considering section 4(a)(1)(D), which only permits agencies to evaluate "existing regulatory mechanisms." They also stated that the

Services incorrectly conclude that section 4(a)(1)(E), "other natural or manmade factors affecting [the species'] continued existence," allows the Services to consider actions of "any other entity" in making listing determinations. One commenter stated that there are no provisions to authorize the Services to consider voluntary conservation agreements by other Federal agencies. In 1982, the Act omitted 1973 language for listing determinations made with "other interested Federal agencies." In addition, the commenters stated that the Act imposes conservation duties on all Federal agencies only after the Services have taken the initial step in listing the species.

Response 31: Please refer to the Policy Scope section for an explanation of our authority under section 4 of the Act to assess all threats affecting the species status as well as all efforts that reduce threats to the species.

Issue 32: One commenter suggested that we formalize this policy by codifying it in the Code of Federal Regulations. They suggest that by adopting this policy as agency regulation, we can make the policy more binding, provide a basis for judicial deference, and thus hopefully reduce the amount of litigation.

Response 32: We believe that codifying PECE in the Code of Federal Regulations is not necessary because it is intended as a policy to guide how we will evaluate formalized conservation efforts when making listing decisions.

Issue 33: Some commenters believe that all regulatory mechanisms must be in place prior to finalizing a conservation plan, while other commenters feel that this requirement may dissuade voluntary conservation efforts of private landowners. One commenter stated that, based on the amount of time usually needed to enact most regulatory mechanisms, it seems appropriate to set this minimum standard for evaluating formalized conservation efforts. This criterion should prompt more serious political consideration of adopting a regulatory mechanism sooner rather than later. Another commenter suggested that, instead of requiring regulations, we should require cooperators to identify and address any regulatory deficiencies affecting the species.

Response 33: In order for us to determine with a high level of certainty that a formalized conservation effort will be implemented, among other things, all regulatory mechanisms necessary to implement the effort must be in place at the time we make our listing decision. However, there may be

situations where regulatory mechanisms are not necessary for implementing the conservation effort due to the nature of the action that removes threats, or there may be situations where necessary regulatory mechanisms are already in place.

Issue 34: One commenter stated that only when an alternative regulatory mechanism provides the same or higher protections than listing can the threat factors be said to be alleviated. A high level of certainty over future funding or voluntary participation might be acceptable if alternative regulatory mechanisms to prevent take in the interim are in place.

Response 34: Determinations to list species under the Act are based solely on whether or not they meet the definitions of threatened or endangered as specified by the Act. Through PECE, we will evaluate, at the time of our listing decision, whether a formalized conservation effort adequately reduces threats and improves the status of the species to make listing unnecessary. Additional alternative regulatory mechanisms to prevent take are not necessary if the threats to the species are reduced to the point that the species does not meet the definitions of threatened or endangered.

Issue 35: One commenter stated concern that the Services would not be able to provide assurances to private landowners because no specific provisions in the Act authorize conservation agreements in lieu of listing, and that third party lawsuits also undermine the Services' assurances. One commenter asked what future protection of their ongoing actions participants would receive.

Response 35: Satisfying the PECE criteria does not provide assurances that we will not decide to list a species. Also, because of the individual nature of species and the circumstances of their status, PECE does not address how much conservation is required to make listing unnecessary. Because of the numerous factors that affect a species' status, we may list a species despite the fact that one or more formalized conservation efforts have satisfied PECE. However, assurances can be provided to non-Federal entities through an approved Candidate Conservation Agreement with Assurances (CCAA) and in an associated enhancement of survival permit issued under section 10(a)(1)(A) of the Act. Many property owners desire certainty with regard to future regulatory restrictions to guarantee continuation of existing land or water uses or to assure allowance for future changes in land use. By facilitating this kind of individual land

use planning, assurances provided under the CCAA policy can substantially benefit many property owners. These agreements can have significance in our listing decisions, and we may also evaluate them according to the criteria in the PECE if they are not yet implemented or have not demonstrated results. However, we will make the determination of whether these CCAs preclude or remove any need to list the covered species on a case-by-case basis in accordance with the listing criteria and procedures under section 4 of the Act.

Issue 36: Several commenters stated that the PECE does not always provide incentives to conserve species and is, therefore, not supported by the Congressional finding of section 2(a)(5) of the Act. The commenters stated that the parties lack incentives to develop conservation programs until after the species is listed (e.g., *Building Industry Association of Southern California v. Babbitt*, where listing the coastal California gnatcatcher encouraged enrollment in conservation programs.) In addition, they stated that PECE provides a means for the listing process to be avoided entirely, and, therefore, may often fail to provide incentives that Congress referred to in its findings in section 2(a)(5). They stated that the "system" of incentives to which that Congressional finding refers is already found in incidental take provisions in section 10 of the Act, which will better ensure development and implementation of successful conservation programs.

Response 36: PECE is not "a way to avoid listing" or an "in lieu of listing" policy. This policy outlines guidance on the criteria we will use to evaluate formalized conservation efforts in determining whether to list a species. Knowing how we will evaluate any unimplemented or unmeasured formalized conservation efforts may help parties draft more effective agreements. However, there is a conservation incentive because, if a species becomes listed, these efforts can contribute to recovery and eventual delisting or downlisting of the species. Also, see our response to Issue 35.

Issue 37: Several commenters stated that relying on unimplemented future conservation measures is inconsistent with the definitions of "threatened species" and "endangered species" as provided in section 3 of the Act, and that PECE's evaluation of future, unimplemented conservation efforts in listing determinations is inconsistent with both the plain language of the Act and Congressional intent. Also, the commenters stated that the PECE

erroneously claims that the definitions of "threatened species" and "endangered species" connote future status, not present status.

Response 37: We agree that, when we make a listing decision, we must determine the species' present status which includes, in part, an evaluation of current threats. However, deciding or determining whether a species meets the definition of threatened or endangered also requires us to make a prediction about the future persistence of a species. Central to this concept is a prediction of future conditions, including consideration of future negative effects of anticipated human actions. The language of the Act supports this approach. The definitions for both "endangered species" and "threatened species" connote future condition, which indicates that consideration of whether a species should be listed depends in part on identification and evaluation of future actions that will reduce or remove, as well as create or exacerbate, threats to the species. We cannot protect species without taking into account future threats to a species. The Act does not require that, and species conservation would be compromised if, we wait until a threat is actually impacting populations before we list the species as threatened or endangered. Similarly, the magnitude and/or imminence of a threat may be reduced as a result of future positive human actions. Common to the consideration of both the negative and positive effects of future human actions is a determination of the likelihood that the actions will occur and that their effects on the species will be realized. Therefore, we consider both future negative and future positive impacts when assessing the listing status of the species. The first factor in section 4(a)(1)—"the present or threatened destruction, modification, or curtailment of [the species'] habitat or range"—identifies how analysis of both current actions affecting a species' habitat or range and those actions that are sufficiently certain to occur in the future and affect a species' habitat or range are necessary to assess a species' status. However, future Federal, state, local, or private actions that affect a species are not limited to actions that will affect a species' habitat or range. Congress did not intend for us to consider future actions affecting a species' habitat or range, yet ignore future actions that will influence overutilization, disease, predation, regulatory mechanisms, or other natural or manmade factors. Therefore, we construe Congress' intent, as reflected

by the language of the Act, to require us to consider both current actions that affect a species' status and sufficiently certain future actions—either positive or negative—that affect a species' status.

Issue 38: Several commenters stated that PECE's "sufficient certainty" standard is inconsistent with the Act's "best available science" standard. They stated that courts have ruled that any standard other than "best available science" violates the plain language and the Congressional intent of the Act. The commenters also stated that the "sufficient certainty" standard violates Congressional intent because it weakens the standard required by the Act to list species and can result in unnecessary, and potentially harmful, postponement of affirmative listing.

Response 38: We agree that our listing decisions must be based on the best available science. PECE does not address or change the listing criteria and procedures established under section 4 of the Act. Listing analyses include the evaluation of conservation efforts for the species under consideration. PECE is designed to help ensure a consistent and rigorous review of formalized conservation efforts that have yet to be implemented or efforts that have been implemented but have not yet shown effectiveness by establishing a set of standards to evaluate the certainty of implementation and effectiveness of these efforts.

Issue 39: Several commenters stated that PECE reduces or eliminates public comment on proposed rules to list species and is in violation of the Administrative Procedure Act (APA). Further, they stated that PECE violates the APA by allowing submission of formalized conservation measures after the proposed rule is issued to list species as threatened or endangered. Receiving "conservation agreements or plans before the end of the comment period in order to be considered in final listing decision" encourages landowners to submit conservation agreements at the last minute to avoid public scrutiny, and the PECE process could be a potential delay tactic used by landowners to postpone the listing of species. They stated that the Courts agree that failure of the Services to make available to the public conservation agreements on which listing decisions are based violates the public comment provision of the APA.

Response 39: All listing decisions, including those involving formalized conservation agreements, will comply with the requirements of the APA and ESA. If we receive a formalized conservation agreement or plan during an open comment period and it presents

significant new information relevant to the listing decision, we would either extend or reopen the public comment period to solicit public comments specifically addressing that plan or agreement. We recognize, however, that there may be situations where APA requirements must be reconciled with the ESA's statutory deadlines.

Issue 40: Several commenters expressed their concern that conservation efforts do not have binding obligations.

Response 40: While PECE does not require participants to have binding obligations, the policy does require a high level of certainty that a conservation effort will be implemented and effective at the time we make our listing decision. Furthermore, any subsequent failure to satisfy one or more PECE criteria would constitute new information and, depending on the significance of the formalized conservation effort to the species' status, may require a reevaluation of whether there is an increased risk of extinction, and whether that increased risk indicates that the species' status is threatened or endangered.

Funding Issues

Issue 41: Several commenters requested that we further specify our criteria stating that "a high level of certainty that the party(ies) to the agreement or plan that will implement the conservation effort will obtain the necessary funding is provided." In addition, one commenter questioned whether "a high level of certainty" for authorizations or funding was really an improvement over the status quo and suggested that we either list the required elements we will use to evaluate completeness of the conservation efforts or quantitatively define an evaluation standard.

Response 41: A high level of certainty of funding does not mean that funding must be in place now for implementation of the entire plan, but rather, it means that we must have convincing information that funding will be provided each year to implement relevant conservation efforts. We believe that at least 1 year of funding should be assured, and we should have documentation that demonstrates a commitment to obtain future funding, e.g., documentation showing funding for the first year is in place and a written commitment from the senior official of a state agency or organization to request or provide necessary funding in subsequent budget cycles, or documentation showing that funds are available through appropriations to existing programs and the

implementation of this plan is a priority for these programs. A fiscal schedule or plan showing clear links to the implementation schedule should be provided, as well as an explanation of how the party(ies) will obtain future necessary funding. It is also beneficial for entities to demonstrate that similar funding was requested and obtained in the past since this funding history can show the likelihood that future funding will be obtained.

Issue 42: One commenter suggested that the PECE policy holds qualifying conservation efforts to a higher standard than recovery plans. The commenter quoted several existing recovery plans that included disclaimers about budget commitments associated with specific tasks. Therefore, the commenter concluded that it is unrealistic and unreasonable to mandate that funding be in place when a conservation effort is evaluated.

Response 42: The Act does not require that certainty of implementation be provided for recovery management actions for listed species or conservation efforts for nonlisted species. Likewise, the PECE does not require that certainty of implementation be provided for during development of conservation efforts for nonlisted species. It is inappropriate to consider the PECE as holding conservation plans or agreements to a higher standard than the standard that exists for recovery plans because the PECE does not mandate a standard for conservation plans or agreements at the time of plan development. Rather, the PECE provides us guidance for the evaluation of conservation efforts when making a listing decision for a nonlisted species.

Recovery plans for listed species and conservation plans or agreements for nonlisted species identify needed conservation actions but may or may not provide certainty that the actions will be implemented or effective. However, when making a listing decision for nonlisted species, we must consider the certainty that a conservation effort will be implemented and effective. The PECE establishes criteria for us to use in evaluating conservation efforts when making listing decisions.

It is possible that we would evaluate a management action identified in a recovery plan for a listed species using the PECE. If, for example, a yet-to-be-implemented task identified in a recovery plan for a listed species would also benefit a nonlisted species, we, in making a listing decision for the nonlisted species, would apply the PECE criteria to that task to determine whether it could be considered as contributing to a decision not to list the

species or to list the species as threatened rather than endangered. In this situation, we would evaluate the management task identified in a recovery plan using the PECE criteria in the same way as other conservation efforts for the nonlisted species. That is, the recovery plan task would be held to the same evaluation standard in the listing decision as other conservation efforts.

Foreign Species Issues

Issue 43: One commenter asked why the proposed policy excluded conservation efforts by foreign governments, even though section 4(b)(1)(A) of the Act requires the Services to take such efforts into account. This commenter also stated that the proposed policy is contrary to "The Foreign Relations Law of the United States," which he argues requires the United States to defer to other nations when they have a "clearly greater interest" regarding policies or regulations being considered by the United States that could negatively affect their nations.

Response 43: As required by the Act, we have taken and will continue to take into account conservation efforts by foreign countries when considering listing of foreign species (sections 4(b) and 8 of the Act). Furthermore, whenever a species whose range occurs at least in part outside of the United States is proposed for a listing action (listing, change in status, or delisting), we communicate with and solicit the input of the countries within the range of the species. At that time, countries are provided the opportunity to share information on the status of the species, management of the species, and on conservation efforts within the foreign country. We will take those comments and information provided into consideration when evaluating the listing action, which by law must follow the analysis outlined in sections 4(a) and 4(b) of the Act. Thus, all listing decisions for foreign species will continue to comply with the provisions of the Act.

Issues Outside Scope of Policy

We received several comments that were outside of the scope of PECE. Below, we have briefly addressed these comments.

Issue 44: A comment was made that the Services should not list foreign species under the Act when such listing is in conflict with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Response 44: Considerations regarding CITES are outside the scope of the PECE. However, we do not believe there is a conflict with CITES and listing of a foreign species under the Act. When evaluating the status of foreign species under the Act, we take into consideration whether the species is listed under CITES (and if listed, at what level) and all available information regarding the listing. If you have questions regarding CITES, please contact the FWS Division of Scientific Authority at 4401 N. Fairfax Drive, Room 750, Arlington, VA 22203 or by telephone at 703-358-1708.

Issue 45: One commenter stated that all conservation agreements/plans should be subject to independent scientific peer review. This commenter also argued that any conservation agreement or plan for a candidate species should remove all known major threats for the species and convey a reasonably high certainty that the agreement or plan will result in full conservation of the species.

Response 45: We believe that scientific review can help ensure that formalized conservation efforts are comprehensive and effective, and we expect that most or all participants will seek scientific review, but we will not require a formal independent peer review of conservation plans at the time of development. If a formalized conservation plan is presented for a species that has been proposed for listing, all relevant information, including formalized conservation efforts, will be subject to independent scientific review consistent with our policy on peer review (59 FR 34270). We will also solicit public comments on our listing proposals.

The amount or level of conservation proposed in a conservation plan (e.g., removal of all versus some of the major threats) is outside the scope of PECE. Assuming that all of the PECE criteria have been satisfied for the efforts to which they apply, it stands to reason that plans that comprehensively address threats are likely to be more influential in listing decisions than plans that do not thoroughly address the conservation of the species. We believe that by establishing the PECE criteria for certainty of implementation and effectiveness, we are promoting the development of plans that improve the status of species. We expect that in some cases this improvement will reduce the risk of extinction sufficiently to make listing under the Act unnecessary, to result in listing a species as threatened rather than endangered, or to make classifying a

species as a candidate for listing unnecessary.

Issue 46: Several commenters questioned the extent of state involvement in the development of conservation efforts. One commenter said that the policy should mandate that States be involved with plan development, and that states approve all conservation efforts.

Response 46: It is outside the scope of PECE to establish standards to determine who participates in the development of conservation efforts and at what level. In many cases, states play a crucial role in the conservation of species. For formalized conservation efforts to be effective, it is logical for the states to play an integral role. To that end, we highly encourage state participation to help ensure the conservation of the species, but we do not believe that states should be mandated to participate in the development of all conservation plans. In some cases, states may not have the resources to participate in these plans, and in other situations, individuals or non-state entities may have the ability to develop an effective and well-implemented plan that does not require state participation, but that contributes to the conservation of a species. Through our listing process, we will work with state conservation agencies, and, if the listing decision involves a public comment period, states have a formal opportunity to comment on any conservation efforts being considered in the listing decision.

Issue 47: Several comments were made regarding the feedback mechanisms to correct a party's (ies') inadequate or ineffective implementation of a conservation effort. It was suggested that the Services specify clearly, and based on scientific information, those factors which the Services believe indicate that a conservation effort is either not being implemented or not being effective. Comments also suggested that party(ies) be given reasonable time (e.g., 90-120 days) to respond to the Service's findings by either implementing actions, achieving objectives, or providing information to respond to the Services.

Response 47: PECE is not a regulatory approval process, and establishing a formal feedback mechanism between the Services and participants is not within the scope of PECE. The final determination whether to list a species under the Act will rest solely upon whether or not the species under consideration meets the definition of threatened or endangered as specified by the Act, which will include consideration of whether formalized

conservation efforts that meet PECE criteria have enhanced the status of the species. We will provide guidance to improve conservation efforts when possible, but we cannot delay listing decisions in order to participate in a corrective review process when the best scientific and commercial data indicate that a species meets the definition of threatened or endangered.

Issue 48: One commenter requested that we clarify how significant the conservation agreement must be to the species, and describe the anticipated overall impact/importance to the species and the estimated extent of the species' overall range that the habitat conservation agreement might cover.

Response 48: PECE does not establish standards for how much or what kind of conservation is required to make listing a species under the Act unnecessary. We believe that high-quality formalized conservation efforts should explain in detail the impact and significance of the effort on the target species. However, at the time of our listing decision, we will evaluate formalized conservation efforts using PECE to determine whether the effort provides certainty of implementation and effectiveness and improves the status of the species. Through our listing process, we will determine whether or not a species meets the definition of threatened or endangered.

Issue 49: Several commenters wrote that states do not have additional resources to be pro-active on candidate conservation efforts, and suggested that funding for conservation plans or efforts should be provided by the Federal Government.

Response 49: This comment is outside the scope of the PECE. This policy establishes a set of standards for evaluating formalized conservation efforts in our listing decisions and does not address funding sources to develop and implement these efforts.

Summary of Changes From the Proposed Policy

We have slightly revised some of the evaluation criteria as written in the proposed policy. We made the following changes to reflect comments that we received during the public comment period. We added the word "legal" to criterion A.2., incorporated additional language ("the commitment to proceed with the conservation effort is described."), and separated this criterion into two criteria (A.2. and A.3.). We revised criterion A.3. (formerly part of A.2.) to recognize that parties cannot commit to completing some legal procedural requirements (e.g. National Environmental Policy Act)

since some procedural requirements preclude commitment to a proposed action before the procedures are actually completed. We changed criterion A.5. (formerly A.4.) by adding "type" and "(e.g., number of landowners allowing entry to their land, or number of participants agreeing to change timber management practices and acreage involved)" and by replacing "why" with "how" and "are expected to" with "will." We deleted the word "all" at the beginning of criterion A.6. as we felt it was redundant. We added "(including incremental completion dates)" to criterion A.8. (formerly A.7.). To criterion B.1. we added "and how the conservation effort reduces the threats is described."

Also in the proposed policy we stated that if we make a decision not to list a species, or to list the species as threatened rather than endangered, based in part on the contributions of a formalized conservation effort, we will monitor the status of the species. We have clarified this in the final policy to state that we will monitor the status of the effort, including the progress of implementation of the formalized conservation effort.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant policy and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

(a) This policy will not have an annual economic effect of \$100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The policy for the evaluation of conservation efforts when making listing decisions does not pertain to commercial products or activities or anything traded in the marketplace.

(b) This policy is not expected to create inconsistencies with other agencies' actions. FWS and NMFS are responsible for carrying out the Act.

(c) This policy is not expected to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) OMB has determined that this policy may raise novel legal or policy issues and, as a result, this action has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the

Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions), unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our determination.

We have examined this policy's potential effects on small entities as required by the Regulatory Flexibility Act and have determined that this action will not have a significant economic impact on a substantial number of small entities since the policy will not result in any significant additional expenditures by entities that develop formalized conservation efforts. The criteria in this policy describe how we will evaluate elements that are already included in conservation efforts and do not establish any new implementation burdens. Therefore, we believe that no economic effects on States and other entities will result from compliance with the criteria in this policy.

Pursuant to the Regulatory Flexibility Act, at the proposed policy stage, we certified to the Small Business Administration that this policy would not have a significant economic impact on a substantial number of small entities, since we expect that this policy will not result in any significant additional expenditures by entities that develop formalized conservation efforts. We received no comments regarding the economic impacts of this policy on small entities. Thus, we certify that this final policy will not have a significant adverse impact on a substantial number of small entities and conclude that a regulatory flexibility analysis is not necessary.

We have determined that this policy will not cause (a) any effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographical regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability

of U.S.-based enterprises to compete with foreign-based enterprises (see Economic Analysis below).

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this policy is a significant action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

(a) This policy will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. We expect that this policy will not result in any significant additional expenditures by entities that develop formalized conservation efforts.

(b) This policy will not produce a Federal mandate on state, local, or tribal governments or the private sector of \$100 million or greater in any year; that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. This policy imposes no obligations on state, local, or tribal governments (see Economic Analysis below).

Takings

In accordance with Executive Order 12630, this policy does not have significant takings implications. While state, local or Tribal governments, or private entities may choose to directly or indirectly implement actions that may have property implications, they would do so as a result of their own decisions, not as a result of this policy. This policy has no provision that would take private property.

Federalism

In accordance with Executive Order 13132, this policy does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Commerce policy, we requested information from and coordinated development of this policy with appropriate resource agencies throughout the United States.

Civil Justice Reform

In accordance with Executive Order 12988, this policy does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. With the guidance provided in the policy, requirements under section 4 of the Endangered Species Act will be clarified to entities that voluntarily develop formalized conservation efforts.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This policy contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by Office of Management and Budget (OMB). The FWS has OMB approval for the collection under OMB Control Number 1018-0119, which expires on December 31, 2005. The NMFS has OMB approval for the collection under OMB Control Number 0648-0466, which expires on December 31, 2005. We 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. Public reporting burden for FWS collections of information is estimated to average 2,500 hours for developing one agreement with the intent to preclude a listing, 320 hours for annual monitoring under one agreement, and 80 hours for one annual report. The FWS expects that six agreements with the intent of making listing unnecessary will be developed in one year and that four of these will be successful in making listing unnecessary, and therefore, the entities who develop these four agreements will carry through with their monitoring and reporting commitments. Public reporting burden for NMFS collections of information is estimated to average 2,500 hours for developing one agreement with the intent to preclude a listing, 320 hours for annual monitoring under one agreement, and 80 hours for one annual report. The NMFS expects that two agreements with the intent of making listing unnecessary will be developed in one year and that one of these will be successful in making listing unnecessary, and therefore, the entities who develop this agreement will carry through with their monitoring and reporting commitments. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data

collection, including suggestions for reducing the burden, to the FWS and NMFS (see ADDRESSES section of this policy).

National Environmental Policy Act

We have analyzed this policy in accordance with the criteria of the National Environmental Policy Act (NEPA), the Department of the Interior Manual (318 DM 2.2(g) and 6.3(D)), and National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216-6. This policy does not constitute a major Federal action significantly affecting the quality of the human environment. The FWS has determined that the issuance of the policy is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1 (1.10) and 516 DM 6, Appendix 1. NOAA has determined that the issuance of this policy qualifies for a categorical exclusion as defined by NOAA Administrative Order 216-6, Environmental Review Procedure.

ESA Section 7 Consultation

We have determined that issuance of this policy will not affect species listed as threatened or endangered under the Endangered Species Act, and, therefore, a section 7 consultation on this policy is not required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), E.O. 13175, and the Department of Interior's 512 DM 2, this policy does not directly affect Tribal resources. The policy may have an indirect effect on Native American Tribes as the policy may influence the type and content of conservation plans and efforts implemented by Tribes, or other entities. The extent of this indirect effect will be determined on a case-by-case basis during our evaluation of individual formalized conservation efforts when we make a listing decision. Under Secretarial Order 3206, we will, at a minimum, share with the entity that developed the formalized conservation effort any information provided by the Tribes, through the public comment period for the listing decision or formal submissions. During the development of conservation plans, we can encourage the incorporation of conservation efforts that will restore or enhance Tribal trust resources. After consultation with the Tribes and the entity that developed the formalized conservation effort and after

careful consideration of the Tribe's concerns, we must clearly state the rationale for the recommended final listing decision and explain how the decision relates to our trust responsibility. Accordingly:

(a) We have not yet consulted with the affected Tribe(s). We will address this requirement when we evaluate formalized conservation efforts that have yet to be implemented or have recently been implemented and have yet to show effectiveness at the time we make a listing decision.

(b) We have not yet worked with Tribes on a government-to-government basis. We will address this requirement when we evaluate formalized conservation efforts that have yet to be implemented or have recently been implemented but have yet to show effectiveness at the time we make a listing decision.

(c) We will consider Tribal views in individual evaluations of formalized conservation efforts.

(d) We have not yet consulted with the appropriate bureaus and offices of the Department about the identified effects of this policy on Tribes. This requirement will be addressed with individual evaluations of formalized conservation efforts.

Information Quality

In Accordance with section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554), OMB directed Federal agencies to issue and implement guidelines to ensure and maximize the quality, objectivity, utility, and integrity of Government information disseminated to the public (67 FR 8452). Under our Information Quality guidelines, if we use a conservation plan or agreement as part of our decision to either list or not list a species under the Act, the plan or agreement is considered to be disseminated by us and these guidelines apply to the plan or agreement. The criteria outlined in this policy are consistent with OMB, Department of Commerce, NOAA, and Department of the Interior. FWS information quality guidelines. The Department of the Interior's guidelines can be found at <http://www.doi.gov/ocio/guidelines/515Guides.pdf>, and the FWS's guidelines can be found at <http://irm.fws.gov/infoguidelines/>. The Department of Commerce's guidelines can be found at <http://www.osec.doc.gov/cio/oipri/iqg.html>, and the NOAA/NMFS's guidelines can be found at <http://www.noaanews.noaa.gov/stories/iq.htm>. Under these guidelines, any affected

person or organization may request from FWS or NMFS, a correction of information they believe to be incorrect in the plan or agreement. "Affected persons or organizations" are those who may use, be benefitted by, or be harmed by the disseminated information (i.e., the conservation plan or agreement). The process for submitting a request for correction of information is found in the respective FWS and NOAA guidelines.

Economic Analysis

This policy identifies criteria that a formalized conservation effort must satisfy to ensure certainty of implementation and effectiveness and for us to determine that the conservation effort contributes to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered. We developed this policy to ensure consistent and adequate evaluation of agreements and plans when making listing decisions. The policy will also provide guidance to States and other entities on how we will evaluate certain formalized conservation efforts during the listing process.

The criteria in this policy primarily describe elements that are already included in conservation efforts and that constitute sound conservation planning. For example, the criteria requiring identification of responsible parties, obtaining required authorizations, establishment of objectives, and inclusion of an implementation schedule and monitoring provisions are essential for directing the implementation and affirming the effectiveness of conservation efforts. These kinds of "planning" requirements are generally already included in conservation efforts and do not establish any new implementation burdens. Rather, these requirements will help to ensure that conservation efforts are well planned and, therefore, increase the likelihood that conservation efforts will ultimately be successful in making listing species unnecessary.

The development of an agreement or plan by a state or other entity is completely voluntary. However, when a state or other entity voluntarily decides to develop an agreement or plan with the specific intent of making listing a species unnecessary, the criteria identified in this policy can be construed as requirements placed on the development of such agreements or plans. The state or other entity must satisfy these criteria in order to obtain and retain the benefit they are seeking, which is making listing of a species as threatened or endangered unnecessary.

The criteria in the policy require demonstrating certainty of implementation and effectiveness of formalized conservation efforts. We have always considered the certainty of implementation and effectiveness of conservation efforts when making listing decisions. Therefore, we believe that no economic effects on states and other entities will result from using the criteria in this policy as guidance.

Furthermore, publication of this policy will have positive effects by informing States and other entities of the criteria we will use in evaluating formalized conservation efforts when making listing decisions, and thereby guide states and other entities in developing voluntary formalized conservation efforts that will be successful in making listing unnecessary. Therefore, we believe that informational benefits will result from issuing this policy. We believe these benefits, although important, will be insignificant economically.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Policy for Evaluation of Conservation Efforts When Making Listing Decisions

Policy Purpose

The Fish and Wildlife Service and National Marine Fisheries Service developed this policy to ensure consistent and adequate evaluation of formalized conservation efforts (conservation efforts identified in conservation agreements, conservation plans, management plans, and similar documents) when making listing decisions under the Act. This policy may also guide the development of conservation efforts that sufficiently improve a species' status so as to make listing the species as threatened or endangered unnecessary.

Definitions

"Adaptive management" is a method for examining alternative strategies for meeting measurable biological goals and objectives, and then, if necessary, adjusting future conservation management actions according to what is learned.

"Agreements and plans" include conservation agreements, conservation plans, management plans, or similar documents approved by Federal agencies, State and local governments, Tribal governments, businesses, organizations, or individuals.

"Candidate species," as defined by regulations at 50 CFR 424.02(b), means

any species being considered for listing as an endangered or a threatened species, but not yet the subject of a proposed rule. However, the FWS includes as candidate species those species for which the FWS has sufficient information on file relative to status and threats to support issuance of proposed listing rules. The NMFS includes as candidate species those species for which it has information indicating that listing may be warranted, but for which sufficient information to support actual proposed listing rules may be lacking. The term "candidate species" used in this policy refers to those species designated as candidates by either of the Services.

"Conservation efforts," for the purpose of this policy, are specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species. Conservation efforts may involve restoration, enhancement, maintenance, or protection of habitat; reduction of mortality or injury; or other beneficial actions.

"Formalized conservation efforts" are conservation efforts identified in a conservation agreement, conservation plan, management plan, or similar document. An agreement or plan may contain numerous conservation efforts.

Policy Scope

When making listing decisions, the Services will evaluate whether formalized conservation efforts contribute to making it unnecessary to list a species, or to list a species as threatened rather than endangered. This policy applies to those formalized conservation efforts that have not yet been implemented or have been implemented, but have not yet demonstrated whether they are effective at the time of a listing decision. We will make this evaluation based on the certainty of implementing the conservation effort and the certainty that the effort will be effective. This policy identifies the criteria we will use to help determine the certainty of implementation and effectiveness. Listing decisions covered by the policy include findings on petitions to list species, and decisions on whether to assign candidate status, remove candidate status, issue proposed listing rules, and finalize or withdraw proposed listing rules. This policy applies to formalized conservation efforts developed with or without a specific intent to influence a listing decision and with or without the involvement of the Services.

Section 4(a)(1) of the Endangered Species Act of 1973, as amended (16

U.S.C. 1533(a)(1)), states that we must determine whether a species is threatened or endangered because of any of the following five factors: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Although this language focuses on impacts negatively affecting a species, section 4(b)(1)(A) requires us also to "tak[e] into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas." Read together, sections 4(a)(1) and 4(b)(1)(A), as reflected in our regulations at 50 CFR 424.11(f), require us to take into account any State or local laws, regulations, ordinances, programs, or other specific conservation measures that either positively or negatively affect a species' status (i.e., measures that create, exacerbate, reduce, or remove threats identified through the section 4(a)(1) analysis). The manner in which the section 4(a)(1) factors are framed supports this conclusion. Factor (D) for example—"the inadequacy of existing regulatory mechanisms"—indicates that overall we might find existing regulatory mechanisms adequate to justify a determination not to list a species.

Factor (E) in section 4(a)(1) (any "manmade factors affecting [the species'] continued existence") requires us to consider the pertinent laws, regulations, programs, and other specific actions of any entity that either positively or negatively affect the species. Thus, the analysis outlined in section 4 of the Act requires us to consider the conservation efforts of not only State and foreign governments but also of Federal agencies, Tribal governments, businesses, organizations, or individuals that positively affect the species' status.

While conservation efforts are often informal, such as when a property owner implements conservation measures for a species simply because of concern for the species or interest in protecting its habitat, and without any specific intent to affect a listing decision, conservation efforts are often formalized in conservation agreements, conservation plans, management plans, or similar documents. The development

and implementation of such agreements and plans has been an effective mechanism for conserving declining species and has, in some instances, made listing unnecessary. These efforts are consistent with the Act's finding that "encouraging the States and other interested parties * * * to develop and maintain conservation programs * * * is a key * * * to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants" (16 U.S.C. 1531 (a)(5)).

In some situations, a listing decision must be made before all formalized conservation efforts have been implemented or before an effort has demonstrated effectiveness. We may determine that a formalized conservation effort that has not yet been implemented has reduced or removed a threat to a species when we have sufficient certainty that the effort will be implemented and will be effective.

Determining whether a species meets the definition of threatened or endangered requires us to analyze a species' risk of extinction. Central to this risk analysis is an assessment of the status of the species (i.e., is it in decline or at risk of decline and at what rate is the decline or risk of decline) and consideration of the likelihood that current or future conditions or actions will promote (see section 4(b)(1)(A)) or threaten a species' persistence. This determination requires us to make a prediction about the future persistence of a species, including consideration of both future negative and positive effects of anticipated human actions. The language of the Act supports this approach. The definitions for both "endangered species" and "threatened species" connote future condition, which indicates that consideration of whether a species should be listed depends in part on identification and evaluation of future actions that will reduce or remove, as well as create or exacerbate, threats to the species. The first factor in section 4(a)(1)—"the present or *threatened* destruction, modification, or curtailment of [the species'] habitat or range"—identifies how analysis of both current actions affecting a species' habitat or range and those actions that are sufficiently certain to occur in the future and affect a species' habitat or range are necessary to assess a species' status. However, future Federal, State, local, or private actions that affect a species are not limited to actions that will affect a species' habitat or range. Congress did not intend for us to consider future actions affecting a species' habitat or range, yet ignore future actions that will influence overutilization, disease, predation,

regulatory mechanisms, or other natural or manmade factors. Therefore, we construe Congress' intent, as reflected by the language of the Act, to require us to consider both current actions that affect a species' status and sufficiently certain future actions—either positive or negative—that affect a species' status. As part of our assessment of future conditions, we will determine whether a formalized conservation effort that has yet to be implemented or has recently been implemented but has yet to show effectiveness provides a high level of certainty that the effort will be implemented and/or effective and results in the elimination or adequate reduction of the threats.

For example, if a state recently designed and approved a program to eliminate collection of a reptile being considered for listing, we must assess how this program affects the status of the species. Since the program was just designed, an implementation and effectiveness record may not yet exist. Therefore, we must evaluate the likelihood, or certainty, that it will be implemented and effective, using evidence such as the State's ability to enforce new regulations, educate the public, monitor compliance, and monitor the effects of the program on the species. Consequently, we would determine that the program reduces the threat of overutilization of the species through collecting if we found sufficient certainty that the program would be implemented and effective.

In another example, a state could have a voluntary incentive program for protection and restoration of riparian habitat that includes providing technical and financial assistance for fencing to exclude livestock. Since the state has already implemented the program, the state does not need to provide certainty that it will be implemented. If the program was only recently implemented and no record of the effects of the program on the species' status existed, we would evaluate the effectiveness of this voluntary program at the time of our listing decision. To assess the effectiveness, we would evaluate the level of participation (e.g., number of participating landowners or number of stream-miles fenced), the length of time of the commitment by landowners, and whether the program reduces the threats on the species. We would determine that the program reduces the threat of habitat loss and degradation if we find sufficient certainty that the program is effective.

In addition, we will consider the estimated length of time that it will take for a formalized conservation effort to

produce a positive effect on the species. In some cases, the nature, severity, and/or imminence of threats to a species may be such that a formalized conservation effort cannot be expected to produce results quickly enough to make listing unnecessary since we must determine at the time of the listing decision that the conservation effort has improved the status of the species.

Federal agencies, Tribal governments, state and local governments, businesses, organizations, or individuals contemplating development of an agreement or plan should be aware that, because the Act mandates specific timeframes for making listing decisions, we cannot delay the listing process to allow additional time to complete the development of an agreement or plan. Nevertheless, we encourage the development of agreements and plans even if they will not be completed prior to a final listing decision. Such an agreement or plan could serve as the foundation for a special rule under section 4(d) of the Act, which would establish only those prohibitions necessary and advisable for the conservation of a threatened species, or for a recovery plan, and could lead to earlier recovery and delisting.

This policy provides us guidance for evaluating the certainty of implementation and effectiveness of formalized conservation efforts. This policy is not intended to provide guidance for determining the specific level of conservation (e.g., number of populations or individuals) or the types of conservation efforts (e.g., habitat restoration, local regulatory mechanisms) specifically needed to make listing particular species unnecessary and does not provide guidance for determining when parties should enter into agreements. We do encourage early coordination in conservation measures to prevent the species from meeting the definition of endangered or threatened.

If we make a decision not to list a species or to list the species as threatened rather than endangered based in part on the contributions of a formalized conservation effort, we will track the status of the effort including the progress of implementation and effectiveness of the conservation effort. If any of the following occurs: (1) a failure to implement the conservation effort in accordance with the implementation schedule; (2) a failure to achieve objectives; (3) a failure to modify the conservation effort to adequately address an increase in the severity of a threat or to address other new information on threats; or (4) we receive any other new information

indicating a possible change in the status of the species, then we will reevaluate the status of the species and consider whether initiating the listing process is necessary. Initiating the listing process may consist of designating the species as a candidate species and assigning a listing priority, issuing a proposed rule to list, issuing a proposed rule to reclassify, or issuing an emergency listing rule. In some cases, even if the parties fully implement all of the conservation efforts outlined in a particular agreement or plan, we may still need to list the species. For example, this may occur if conservation efforts only cover a portion of a species' range where the species needed to be conserved, or a particular threat to a species was not anticipated or addressed at all, or not adequately addressed, in the agreement or plan.

Evaluation Criteria

Conservation agreements, conservation plans, management plans, and similar documents generally identify numerous conservation efforts (i.e., actions, activities, or programs) to benefit the species. In determining whether a formalized conservation effort contributes to forming a basis for not listing a species, or for listing a species as threatened rather than endangered, we must evaluate whether the conservation effort improves the status of the species under the Act. Two factors are key in that evaluation: (1) for those efforts yet to be implemented, the certainty that the conservation effort will be implemented and (2) for those efforts that have not yet demonstrated effectiveness, the certainty that the conservation effort will be effective. Because the certainty of implementation and effectiveness of formalized conservation efforts may vary, we will evaluate each effort individually and use the following criteria to direct our analysis.

A. The certainty that the conservation effort will be implemented:

1. The conservation effort, the party(ies) to the agreement or plan that will implement the effort, and the staffing, funding level, funding source, and other resources necessary to implement the effort are identified.
2. The legal authority of the party(ies) to the agreement or plan to implement the formalized conservation effort, and the commitment to proceed with the conservation effort are described.
3. The legal procedural requirements (e.g. environmental review) necessary to implement the effort are described, and information is provided indicating that fulfillment of these requirements does

not preclude commitment to the effort. 4. Authorizations (e.g., permits, landowner permission) necessary to implement the conservation effort are identified, and a high level of certainty is provided that the party(ies) to the agreement or plan that will implement the effort will obtain these authorizations. 5. The type and level of voluntary participation (e.g., number of landowners allowing entry to their land, or number of participants agreeing to change timber management practices and acreage involved) necessary to implement the conservation effort is identified, and a high level of certainty is provided that the party(ies) to the agreement or plan that will implement the conservation effort will obtain that level of voluntary participation (e.g., an explanation of how incentives to be provided will result in the necessary level of voluntary participation). 6. Regulatory mechanisms (e.g., laws, regulations, ordinances) necessary to implement the conservation effort are in place. 7. A high level of certainty is provided that the party(ies) to the agreement or plan that will implement the conservation effort will obtain the necessary funding. 8. An implementation schedule (including incremental completion dates) for the conservation effort is provided. 9. The conservation agreement or plan that includes the conservation effort is approved by all parties to the agreement or plan.

B. The certainty that the conservation effort will be effective:

1. The nature and extent of threats being addressed by the conservation effort are described, and how the conservation effort reduces the threats is described. 2. Explicit incremental objectives for the conservation effort and dates for achieving them are stated. 3. The steps necessary to implement the conservation effort are identified in detail. 4. Quantifiable, scientifically valid parameters that will demonstrate achievement of objectives, and standards for these parameters by which progress will be measured, are identified. 5. Provisions for monitoring and reporting progress on implementation (based on compliance with the implementation schedule) and effectiveness (based on evaluation of quantifiable parameters) of the conservation effort are provided. 6. Principles of adaptive management are incorporated.

These criteria should not be considered comprehensive evaluation criteria. The certainty of implementation and effectiveness of a formalized conservation effort may also

depend on species-specific, habitat-specific, location-specific, and effort-specific factors. We will consider all appropriate factors in evaluating formalized conservation efforts. The specific circumstances will also determine the amount of information necessary to satisfy these criteria.

To consider that a formalized conservation effort(s) contributes to forming a basis for not listing a species or listing a species as threatened rather than endangered, we must find that the conservation effort is sufficiently certain to be implemented and effective so as to have contributed to the elimination or adequate reduction of one or more threats to the species identified through the section 4(a)(1) analysis. The elimination or adequate reduction of section 4(a)(1) threats may lead to a determination that the species does not meet the definition of threatened or endangered, or is threatened rather than endangered. An agreement or plan may contain numerous conservation efforts, not all of which are sufficiently certain to be implemented and effective. Those conservation efforts that are not sufficiently certain to be implemented and effective cannot contribute to a determination that listing is unnecessary or a determination to list as threatened rather than endangered. Regardless of the adoption of a conservation agreement or plan, however, if the best available scientific and commercial data indicate that the species meets the definition of "endangered species" or "threatened species" on the day of the listing decision, then we must proceed with appropriate rule-making activity under section 4 of the Act.

Dated: September 16, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

December 23, 2002.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Services.*

[FR Doc. 03-7364 Filed 3-27-03; 8:45 am]

BILLING CODES 4310-55-S and 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306-2306-01; I.D. 032403A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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

ACTION: Modification of a closure.

SUMMARY: NMFS is reopening directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA) for 24 hours. This action is necessary to fully use the B season allowance of the total allowable catch (TAC) of pollock specified for Statistical Area 610.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 26, 2003, through 1200 hrs, A.l.t., March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

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.

NMFS closed the B season directed fishery for pollock in Statistical Area 610 of the GOA under § 679.20(d)(1)(iii) on March 19, 2003 (68 FR 13857, March 21, 2003).

NMFS has determined that, approximately 986 mt of pollock remain in the B season directed fishing allowance. Therefore, in accordance with 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the B season allowance of pollock TAC specified for Statistical Area 610, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 610 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 24 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA effective 1200 hrs, A.l.t., March 27, 2003.

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 opening of the fishery, not allow the full utilization of the B season allowance of the pollock TAC, and therefore reduce the public's ability to use the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 24, 2003.

Richard W. Surdi,

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

[FR Doc. 03-7514 Filed 3-26-03; 10:05 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 68, No. 60

Friday, March 28, 2003

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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 111

[Docket No. 96N-0417]

Dietary Supplements; Current Good Manufacturing Practice Regulations; Public Meetings

AGENCY: Food and Drug Administration, HHS

ACTION: Notification of public meetings.

SUMMARY: The Food and Drug Administration (FDA) is announcing two public meetings to discuss the proposed rule entitled "Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements" that published in the **Federal Register** of March 13, 2003 (68 FR 12157). These meetings are intended to provide clarification of the proposed rule and to explain how to submit comments on the proposed rule. These meetings will provide stakeholders and interested parties, including small businesses, an opportunity to ask questions about the proposed rule.

DATES: The public meetings will be held on the East coast on Wednesday, April 29, 2003, from 9 a.m. to 12 noon and 1:30 p.m. to 5 p.m. and on the West coast on Monday, May 6, 2003, from 9 a.m. to 12 noon and 1:30 p.m. to 5 p.m. For security and space limitation reasons, you are encouraged to register early. You may preregister via the Internet and fax until close-of-business 2 business days before the meeting and onsite on the day of the meeting, provided that space is available.

ADDRESSES: *East coast meeting:* The first public meeting will be held at the Center for Food Safety and Applied Nutrition, Harvey W. Wiley Auditorium, 5100 Paint Branch Pkwy., College Park, MD 20740.

West coast meeting: The second public meeting will be held at the

Ronald V. Dellums Federal Bldg., 3d floor auditorium, North Tower, 1301 Clay St., Oakland, CA 94612-5213.

A written transcript of the meeting and submitted comments will be available for viewing at the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and on the FDA Web site (see **III. Electronic Access**).

FOR FURTHER INFORMATION CONTACT:

For the East coast meeting: Kenneth Taylor, Center for Food Safety and Applied Nutrition (HFS-810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-1439, FAX: 301-436-2639, or e-mail: Kenneth.Taylor@cfsan.fda.gov.

For the West coast meeting: Janet McDonald, FDA/San Francisco District, 1431 Harbor Bay Pkwy., Alameda, CA 94502-7070, 510-337-6845, FAX: 510-337-6708, or e-mail: Janet.McDonald@fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In 1994, the Dietary Supplement Health and Education Act (DSHEA) amended the Federal Food, Drug, and Cosmetic Act. DSHEA, among other things, provided FDA with express statutory authority to prescribe current good manufacturing practices (CGMPs) for dietary supplements (21 U.S.C. 342(g)). In the **Federal Register** of March 13, 2003 (68 FR 12157), FDA published a proposed rule entitled "Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements" to establish CGMPs that include provisions on manufacturing, packaging, labeling, testing, quality control, releasing for distribution, and holding of dietary ingredients and dietary supplements. The proposed CGMPs are intended to ensure that manufacturing practices will not result in an adulterated dietary supplement and that dietary supplements are accurately labeled.

These public meetings will provide an opportunity to brief stakeholders on the proposed rule and allow them to ask questions about the proposed rule. They are also intended to fulfill part of the outreach requirement of the Small Business Regulatory Enforcement Fairness Act of 1996.

Agenda: The daylong meetings will have two sessions: The morning session will target interested parties including both small and large firms that manufacture, package, or hold dietary ingredients and dietary supplements; and the afternoon session will target small firms. Small firms are encouraged to attend both sessions.

The morning agenda will include an overview of the proposed rule and the following specific topics: (1) Personnel, (2) physical plant, (3) equipment and utensils, (4) production and process controls, (5) holding and distributing, (6) consumer complaints, and (7) recordkeeping. In addition to explaining the content of the proposed rule, we will instruct participants on the process for submitting comments. We will also discuss the types of information that we are interested in obtaining, i.e., information that would be relevant to developing a final rule and to the economic impact of the rule. Lastly, we will describe how the Small Business Administration can help small firms that might be affected by the proposed rule.

The afternoon session will provide small businesses an opportunity to ask questions about the proposed rule. They can ask about any special implications to small businesses and about any items from the morning presentations that need more clarification. We will provide information on the process for submitting comments and on the types of information that we are interested in obtaining from small businesses, i.e., information that would be relevant to developing a final rule and to the economic impact of the rule. The session will begin with a short presentation on the Federal rulemaking process, including how to effectively comment on rules in general and how to address particular questions that the Government has requested comment on. Following the presentation, participants will be asked to break into smaller groups to facilitate open discussion.

Comments: To submit written comments on the proposed rule, please follow the instructions in the "Request for Comments" section of that document (68 FR 12157, March 13, 2003).

II. Registration

You may preregister for either meeting via the Internet (see **III. Electronic Access**) or by fax (see **FOR FURTHER INFORMATION CONTACT**) until

§ 1.761-3 [Corrected]

2. On page 2941, column 1, § 1.761-3(d)(2), *Example 3.*, paragraph (ii), line 10, the language, “warrant comprise an investment unit with” is corrected to read “warrant comprise an investment unit within”.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03-7525 Filed 3-27-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 31**

[REG-116641-01]

RIN 1545-BA17

Information Reporting and Backup Withholding for Payment Card Transactions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations; and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations; and notice of public hearing. (REG-116641-01) which was published in the **Federal Register** on Friday, January 31, 2003 (68 FR 4970). This regulation relates to the IRS Taxpayer Identification Number (TIN) Matching Program. The text of the temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** serves as the text of this portion of the proposed regulations. This document also contains proposed regulations relating to the information reporting requirements, information reporting penalties, and backup withholding requirements for payment card transactions.

FOR FURTHER INFORMATION CONTACT: Donna Welch at (202) 622-4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

The proposed regulations that are the subject of these corrections are under section 3406 of the Internal Revenue Code.

Need for Correction

As published, this notice of proposed rulemaking contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking, (REG-116641-01), which is the subject of FR Doc. 03-2208, is corrected as follows:

1. On page 4971, column 1, in the preamble, paragraph 1, line 4, the language “payments. Section 1.6041-3(q)(1)” is corrected to read “payments. Section 1.6041-3(p)(1)”.

§ 31.3406(g)-1 [Corrected]

2. On page 4973, column 1, § 31.3406(g)-1(f)(1)(ii), line 7, the language “payee is a not a qualified payee” is corrected to read “payee is not a qualified payee”.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03-7267 Filed 3-27-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Alcohol and Tobacco Tax and Trade Bureau****27 CFR Parts 7 and 25**

[Notice No. 4]

RIN 1512-AC11

Flavored Malt Beverages and Related Proposals (2001R-136P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** on March 24, 2003, regarding flavored malt beverages. We inadvertently published an incorrect telephone number for submitting comments by fax. This correction gives the correct telephone number for submitting comments by fax.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 10 Causeway Street, Room 701, Boston, MA 02222; telephone 617-557-1323.

Correction

In proposed rule FR Doc. 03-6855, beginning on page 14292 in the issue of March 24, 2003, make the following correction in the **SUPPLEMENTARY**

INFORMATION section. On page 14300, in the second column, under the heading C. How May I Submit Comments?, correct the second paragraph to read: “By fax: You may submit comments by facsimile transmission to 202-927-8525. We will treat faxed transmissions as originals.”

Dated: March 25, 2003.

John J. Manfreda,

Acting Administrator.

[FR Doc. 03-7624 Filed 3-27-03; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF COMMERCE**Patent and Trademark Office****37 CFR Parts 2 and 7**

[Docket No. 2003-T-010]

RIN 0651-AB45

Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking; Notice of hearing.

SUMMARY: The United States Patent and Trademark Office (Office) proposes to amend existing regulations and add new regulations to the rules of practice to implement the Madrid Protocol Implementation Act of 2002 (MPIA). The MPIA provides that: the owner of a U.S. application or registration may seek protection of its mark in any of the 57 countries party to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol) by submitting a single international application through the Office to the International Bureau of the World Intellectual Property Organization (IB); and the owner of an application or registration in a country party to the Madrid Protocol may obtain an international registration from the IB and request an extension of protection of its mark to the United States.

DATES: Comments must be received by May 27, 2003 to ensure consideration. A public hearing will be held at 10 a.m., Friday, May 30, 2003, in the Patent Theater, 2121 Crystal Drive, Room 200, Arlington, Virginia. Submit requests to present oral testimony on or before May 20, 2003.

ADDRESSES: Submit comments by electronic mail (e-mail) to: madridrules.comments@uspto.gov. Written comments may also be

submitted by mail or hand delivery to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202, attention Cheryl L. Black. Copies of all comments will be available for public inspection in Suite 10B10, South Tower Building, 10th floor, 2900 Crystal Drive, Arlington, Virginia 22202-3513, from 8:30 a.m. until 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Cheryl L. Black, Office of the Commissioner for Trademarks, by telephone at (703) 308-8910, extension 153, by e-mail to cheryl.black@uspto.gov, or by facsimile at (703) 872-9292.

SUPPLEMENTARY INFORMATION: The Madrid Protocol Implementation Act of 2002, Pub. L. 107-273, 116 Stat. 1758, 1913-1921 (MPIA) amends the Trademark Act of 1946 to implement the provisions of the Madrid Protocol in the United States. The Madrid Protocol provides a process of filing an international application with requests for extensions of protection to any of the 57 member countries of the Protocol. The MPIA was enacted on November 2, 2002, and becomes effective on November 2, 2003.

The Madrid Protocol and the Common Regulations Under the Madrid Agreement and the Protocol (Common Regulations) are available online at <http://www.wipo.int/madrid/en/>.

References below to "the Act," "the Trademark Act," or "the statute" refer to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, as amended by the MPIA.

Filings under Madrid Protocol

Background

The Madrid Protocol provides a system for obtaining an international registration. The IB maintains the system in accordance with the guidelines set forth in the Common Regulations. To apply for an international registration under the Protocol, an applicant for an international application must be a national of, be domiciled in, or have a real and effective business or commercial establishment in one of the countries that are members of the Protocol (Contracting Parties). An international applicant can submit an international application only on the basis of a trademark application or registration in one of the Contracting Parties (basic application or basic registration). The international application must be for the same mark and include a list of goods and/or services identical to or narrower than the list of goods and/or services in the basic application or registration. The

international application must designate one or more Contracting Parties in which an extension of protection of the international application is sought.

The international application must be submitted through the trademark office of the Contracting Party in which the basic application or registration is held (office of origin). The office of origin must certify that the information in the international application corresponds with the information in the basic application or registration, and transmit the international application to the IB.

The IB reviews the international application to determine whether the Madrid Protocol filing requirements have been met and the required fees have been paid. If an international application is unacceptable, the IB will notify both the applicant and the office of origin of the "irregularity." If the Madrid Protocol requirements have been met and the fees have been paid, the IB will immediately register the mark, publish the international registration in the WIPO Gazette of International Marks, send a certificate to the holder, and notify the offices of the designated Contracting Parties in which an extension of protection of the international registration is sought.

The holder of an international registration may designate additional Contracting Parties in a subsequent designation. A subsequent designation is a request by the holder of an international registration for an extension of protection of its international registration to additional Contracting Parties. Each Contracting Party designated in an international application or in a subsequent designation will examine the request for extension of protection as a national application under its laws.

Discussion of Specific Rules Changed or Added

The Office proposes to add new rules setting forth the requirements for submitting international applications and subsequent designations through the Office for forwarding to the IB. The Office also proposes to add new rules for processing requests for extension of protection of international registrations designating the United States.

The Office proposes to add rules 7.1, 7.3, 7.4, 7.6, 7.7, 7.11, 7.12, 7.13, 7.14, 7.21, 7.22, 7.23, 7.24, 7.25, 7.26, 7.27, 7.28, 7.29, 7.30, 7.31, 7.36, 7.37, 7.38, 7.39, 7.40, and 7.41; and designate part 7 of 37 CFR as the rules of practice in filings pursuant to the Madrid Protocol.

Proposed § 7.1 defines certain terms used in this part. Terms defined in the MPIA are not included in the list of definitions in § 7.1.

Proposed § 7.3 requires that correspondence relating to international applications and registrations be in English.

Proposed § 7.4 states that correspondence submitted electronically will be accorded the date and time the complete transmission is received in the Office based on Eastern Time.

Fees

The Office proposes to require fees for processing filings under the Madrid Protocol. Proposed § 7.6 sets forth the fees payable to the Office for processing correspondence relating to international applications and registrations. These fees must be paid in U.S. dollars at the time of submission.

The Office proposes to charge a fee: (1) For reviewing and certifying an international application; (2) for transmitting a subsequent designation; (3) for transmitting a request to record an assignment or restriction of a holder's right of disposal of an international registration; (4) for requesting a notice of replacement; and (5) for filing an affidavit of use in commerce or excusable nonuse for a mark in a registered extension of protection to the United States.

In addition to the fees required by the Office, there are international fees for processing international applications and registrations. Proposed § 7.7 sets forth the international fees payable to the IB in connection with international applications and registrations, and the requirements and procedures for submitting these fees through the Office. A schedule of the international fees is posted at <http://www.wipo.int/madrid/en/>. The international applicant or holder may pay the fees directly to the IB, or to the IB through the Office. Fees paid directly to the IB must be paid in Swiss francs, and fees paid through the Office must be paid in U.S. dollars. The fees that may be paid through the Office are listed in proposed § 7.7(b).

Under proposed § 7.7(c), international fees paid through the Office must be paid in U.S. dollars at the time of submission. To pay fees directly to the IB, the international applicant or holder must either: (1) Establish an account with the IB for debiting fees, and set forth the number of that account as proof of payment in its submission to the Office; or (2) pay the fees to the IB using any other method of payment, and include the IB receipt number for payment of the fees as proof of payment in its submission to the Office.

International Applications Originating from the United States

The requirements for granting a date of receipt to an international application submitted through the Office are set forth in proposed § 7.11(a). The Office proposes to require the submission of an international application through the Trademark Electronic Application System (TEAS). An international application must identify at least one basic application or registration. The international application may be based on more than one basic U.S. application and/or registration, provided that the owner and the mark are the same for each basic U.S. application or registration.

Under section 61 of the Act, and proposed § 7.11(a)(10), the international applicant must specify that applicant is a national of, is domiciled in, or has a real and effective industrial or commercial establishment in the United States.

Proposed § 7.11(a)(3) requires a reproduction of the mark in the international application that is identical to the mark in the basic application or registration and that meets the drawing requirements of § 2.52. If the mark in the basic application or registration is depicted in black and white, the reproduction of the mark in the international application must be black and white. If the mark in the basic application or registration is in color, the mark in the international application must be in color. If a mark for which there is a claim of color is depicted in black and white in the basic application or registration, the international application must include both a black and white reproduction of the mark and a color reproduction of the mark.

Under proposed §§ 7.11(a)(4) and 7.12, if color is claimed as a feature of the mark, the same color claim must be made in the international application. If color is not claimed as a feature of the mark in the basic application or registration, the international application may not include a claim of color.

Under proposed § 7.11(a)(6), if the mark in the basic application or registration is a three-dimensional mark, sound mark, collective mark or certification mark, the international application must indicate the type of mark.

Proposed § 7.11(a)(7) requires a list of goods and/or services in the international application that is identical to or narrower than the list of goods and/or services in the basic application or registration, and is

classified according to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. The applicant may omit goods and/or services from the international application as long as the omission does not broaden the scope of the goods or services identified in the basic application or registration.

Under proposed § 7.11(a)(8), an international applicant must designate at least one Contracting Party in which it seeks an extension of protection.

Under proposed § 7.11(a)(9), the international applicant must pay the U.S. certification fee and the fees required by the IB for all classes and all designated Contracting Parties at the time of submission.

Proposed § 7.13 sets forth the requirements for certifying and forwarding an international application to the IB. Under proposed § 7.13(a), if an international application meets the requirements of proposed § 7.11(a), the Office will grant a date of receipt and certify that the information contained in the international application corresponds to the basic application or registration. The Office will forward the international application electronically to the IB.

Proposed § 7.13(b), states that if the Office cannot certify that the information contained in the international application corresponds with the information in the basic application or registration, the Office will notify the applicant that the international application cannot be certified. Any IB fees submitted through the Office will be refunded; however, the Office will not refund the certification fee.

Correcting Irregularities in International Application—Proposed § 7.14

The IB will notify both the international applicant and the Office of any irregularities in the international application. The international applicant is responsible for correcting the irregularities before the end of the response period set forth in the IB's notice to avoid abandonment of the international application. Under rule 11 of the Common Regulations, there are some irregularities that must be corrected through the Office and some that must be corrected directly with the IB. Proposed § 7.14 sets forth the types of irregularities that must be corrected through the Office and the procedures for responding to these irregularities through the Office.

Under proposed § 7.14(d), the Office would require that applicants use TEAS to correct irregularities through the

Office. To assist the Office in its efforts to timely transmit the response or fee to the IB, applicants should submit their responses or fee as early as possible, at least one month prior to the end of the IB's response period.

Irregularities in Classification and Identification of Goods/Services

Rules 12 and 13 of the Common Regulations provide that the IB will not consider a response to irregularities in classification and identification of goods and/or services that is not submitted through the office of origin. Proposed § 7.14(b) provides that an international applicant must respond to irregularities in classification and identification of goods and/or services through the Office. The Office will forward an applicant's response to the IB; however, the Office will not review the response or respond to an irregularity on behalf of an applicant.

Additional Fees for Correcting Irregularities in an International Application

The IB may require an international applicant to pay additional fees as a result of irregularities in the classification of goods or services, or because the international fees submitted with the application were insufficient. Under proposed § 7.14(c), the applicant may pay the additional fees directly to the IB or through the Office. The international applicant must correct the fee irregularities before the end of the response period set forth in the IB's notice, or the international application will abandon at the IB. Under proposed § 7.14(d), if the international applicant is paying the additional fees through the Office, the fees must be paid through TEAS and should be submitted at least one month before the end of the IB's response period.

Other Irregularities

Under proposed § 7.14(e), all other irregularities in the international application must be corrected directly at the IB. Failure to correct certain irregularities by the end of the IB's response period will result in the abandonment of the international application.

Subsequent Designations—Proposed § 7.21

Section 64 of the Act and proposed § 7.21 permit the holder of an international registration to submit a subsequent designation through the Office, if the holder is a national of, is domiciled in, or has a real and effective industrial or commercial establishment in the United States. The holder also has

the option of filing the subsequent designation directly with the IB.

Under proposed § 7.21, if the subsequent designation is submitted through the Office, it must be submitted through TEAS and include the international registration number, the name and address of the holder of the international registration, one or more Contracting Parties in which an extension of protection is sought, and a list of goods and/or services that is identical to or narrower than the goods and/or services listed in the international registration. The holder can omit goods and/or services listed in the international registration as long as the omission does not broaden the scope of the goods or services identified in the international registration. The holder must include the transmittal fee and all subsequent designation fees required by the IB at the time of submission. The Office is not required to certify the subsequent designation.

The IB will review the subsequent designation for completeness before forwarding the request for extension of protection to the designated Contracting Parties. If there are any irregularities in the subsequent designation, the IB will notify both the holder and the Office. The holder must file any responses to the notice directly with the IB. The Office will not forward any responses to irregularities in a subsequent designation to the IB, even if the subsequent designation was submitted through the Office.

Recording Changes to International Registration

Most changes to international registrations can be recorded directly with the IB. Proposed § 7.22(a) requires that all requests to record changes to an international registration be filed at the IB, except in the limited circumstances in which they must be submitted through the Office, as set forth in proposed §§ 7.23 and 7.24.

Proposed § 7.22(b) provides that assignments or restrictions of a holder's rights of disposal of an international registration must be recorded by the IB, and that section 10 of the Act and part 3 of this chapter are not applicable to such assignments or restrictions.

Proposed § 7.22(c) provides that when the Office is notified by the IB of an assignment or restriction of a holder's right to dispose of an international registration with an extension of protection to the United States, the Office will take note of the assignment or restriction in its records. The Assignment Services Division of the Office will record only assignments and restrictions of extensions of protection

to the United States that have been recorded at the IB.

Proposed § 7.23 sets forth the limited circumstances in which a request to record an assignment of an international registration may be submitted through the Office, and the requirements for submitting these requests. Under proposed § 7.23, the Office will forward a request to record an assignment of an international registration to the IB only if: (1) The request is submitted by an assignee who is a national of, is domiciled in or has a real and effective commercial or industrial establishment in the U.S.; and (2) the assignee cannot obtain the assignor's signature for the request to record the assignment.

Proposed § 7.24 sets forth the limited circumstances in which a request to record a restriction of a holder's right to dispose of an international registration may be submitted through the Office, and the requirements for submitting these requests. Under proposed § 7.24, the Office will forward a request to record a restriction of a holder's right of disposal of an international registration (usually a security interest) only if: (1) The restriction is the result of an agreement between the holder of the international registration and the party restricting the holder's right of disposal; (2) the party holding the restriction is a national of, is domiciled in or has a real and effective commercial or industrial establishment in the U.S.; and (3) the signature of the holder of the international registration cannot be obtained for the request to record the restriction. The Office proposes to charge a fee for transmitting a request to record an assignment or restriction to the IB.

Requests for Extension of Protection to the United States

Under section 65 of the Act, the holder of an international registration may request an extension of protection of the international registration to the United States, provided the international registration is not based on a U.S. basic application or registration.

The holder may make a request for extension of protection to the United States either in the international application or in a subsequent designation filed with the IB. Section 66(a) of the Act requires that a request for extension of protection to the United States include a declaration of bona fide intention to use the mark in commerce. The IB will certify that the request for extension of protection contains a declaration of bona fide intention to use the mark in commerce when it forwards the request to the Office. The declaration will remain as part of the

international registration on file at the IB.

The IB will forward the request for extension of protection to the Office electronically. The holder cannot file a request for extension of protection to the United States directly with the Office.

Proposed § 7.25 provides that for purposes of examination and opposition, a request for an extension of protection to the United States will be treated as an application for registration based on an extension of protection of an international registration under section 66(a) of the Act; and that references to "applications" and "registrations" in part 2 of this chapter include extensions of protection to the United States. With the exception of §§ 2.130–2.131, 2.160–2.166, 2.168 and 2.181–2.186, all the sections in part 2 apply to a request for extension of protection to the United States.

Under proposed § 7.26, the filing date of a request for extension of protection to the United States for purposes of examination in the Office is: (1) The international registration date, if the request for extension of protection to the United States was made in the international application, or (2) the date the IB recorded the subsequent designation, if the request for extension of protection to the United States was made in a subsequent designation. Under section 66(b) of the Act, the filing date of the extension of protection will be considered the date of constructive notice pursuant to section 7(c) of the Act.

Under section 67 of the Act and proposed § 7.27, the holder of an international registration may claim priority under Article 4 of the Paris Convention for the Protection of Industrial Property if: (1) the request for an extension of protection contains a claim of priority; and (2) the international registration date or the date of recordal of the subsequent designation requesting an extension of protection to the United States is no later than 6 months after the filing date of the application that formed the basis of the claim of priority.

Replacement

Under section 74 of the Act and proposed § 7.28(a), a registered extension of protection to the United States has the same rights as a previously issued U.S. registration if: (1) both registrations are owned by the same person and identify the same mark; and (2) the goods/services in the previously issued U.S. registration are covered by the registered extension of protection. Under proposed § 7.28(b), the holder of a pending or registered

extension of protection may request that the Office note in its records replacement of the earlier U.S. registration by the extension of protection. The Office proposes to require a fee to note replacement.

Under proposed § 7.29, the replaced U.S. registration will remain in force, unless cancelled, expired or surrendered, as long as the owner files affidavits or declarations of use or excusable nonuse under section 8 of the Act and renews the registration under section 9 of the Act.

Effect of Cancellation or Expiration of International Registration on Extension of Protection

Under section 70 of the Act and proposed § 7.30, the Office will cancel a pending or registered extension of protection to the United States if the IB notifies the Office of the cancellation or expiration of the corresponding international registration, in whole or in part.

Transformation

Under section 70(c) of the Act and proposed § 7.31(a), if an international registration is cancelled by the IB at the request of the office of origin under Article 6(4) of the Madrid Protocol (due to the cancellation or expiration of the basic application or registration), the holder of the international registration may file a request to transform the corresponding extension of protection to the United States into an application under section 1 or 44 of the Act. The requirements for transformation are set forth in proposed § 7.31(b).

The holder of an international registration must file the request for transformation through TEAS within 3 months of the cancellation date of the international registration. The request must include an application filing fee for at least one class of goods and/or services.

Under proposed § 7.31(c), if a request for transformation contains all the elements in § 7.31(b), the cancelled extension of protection to the United States will be transformed into an application under section 1 or 44 of the Act. The application will be accorded the same filing date and same priority (if any) as the cancelled extension of protection to the United States. The application resulting from the transformation will be examined as a new application under part 2 and, if approved for publication, published for opposition. The application must meet all the requirements of the Act and rules for an application under section 1 or section 44 of the Act.

Under proposed § 7.31(e), if the holder does not meet the requirements of § 7.31(b), the Office will not process the request for transformation.

Maintaining an Extension of Protection to the United States

Section 71 of the Act and proposed § 7.36 require a holder of an international registration with a registered extension of protection to the United States to file an affidavit or declaration of use in commerce or excusable nonuse during the following time periods: (1) between the fifth and sixth year after registration; and (2) within the six-month period before the end of every ten-year period after the date of registration, or upon payment of a grace period surcharge, within the three-month grace period immediately following.

Under proposed § 7.41, renewal of an international registration must be made directly with the IB. A request for renewal of an international registration cannot be submitted through the Office. Renewal of international registrations is governed by Article 7 of the Madrid Protocol and Rules 29–31 of the Common Regulations. The term of an international registration is ten years, and it may be renewed for ten years upon payment of the renewal fee.

Amendment to Part 2 Rules

If an international registration is not renewed, the registration will lapse, and the IB will notify the Office. Pursuant to section 70(b) of the Act, the Office will cancel the extension of protection to the United States.

There is no requirement in the MPIA that the holder of a registered extension of protection to the United States renew the extension of protection in the Office under section 9 of the Act.

In addition to the new rules added as part 7 of 37 CFR, the Office proposes to amend rules and add new rules to part 2 of 37 CFR to bring the rules of practice in trademark cases into conformance with the MPIA and to set forth the requirements for examination of, registration of and proceedings before the Trademark Trial and Appeal Board relating to extensions of protection to the United States.

The Office proposes to amend rules 2.2, 2.11, 2.17, 2.18, 2.19, 2.21, 2.33, 2.34, 2.35, 2.37, 2.47, 2.51, 2.52, 2.65, 2.66, 2.72, 2.73, 2.75, 2.84, 2.101, 2.102, 2.104, 2.105, 2.107, 2.111, 2.112, 2.113, 2.118, 2.123, 2.127, 2.128, 2.130, 2.131, 2.142, 2.145, 2.146, 2.151, and 2.171; and to add rules 2.53, 2.54, and 2.126.

The Office proposes to amend § 2.2 to add definitions of “ESTTA” (Electronic System for Trademark Trials and

Appeals), “international application,” and “Office.”

The Office proposes to revise § 2.11 and its heading to indicate that representation before the Office is governed by § 10.14 of this chapter. It is redundant to have provisions governing representation before the Office in both parts 2 and 10.

The Office proposes to reword § 2.17(b) and to add a reference to § 10.14(b).

The Office proposes to amend § 2.18 to clarify procedures for establishing a correspondence address in trademark cases. The proposed amendment does not change current practice.

The Office proposes to amend § 2.19(a) to clarify procedures for sending correspondence after a power of attorney is revoked, and to amend § 2.19(b) to indicate that the procedures for permissive withdrawal of an attorney are governed by § 10.40.

The Office proposes to amend § 2.21(a) to indicate that § 2.21 sets forth the minimum filing requirements only for applications under sections 1 and 44 of the Act. The filing date of an application under section 66(a) of the Act is governed by section 66(b) of the Act and proposed § 7.26.

The Office proposes to amend § 2.33 by adding a new paragraph (e), stating that in an application under section 66(a) of the Act, the verified statement is part of the international registration on file at the IB.

The Office proposes to remove §§ 2.34(a)(1)(v), 2.34(a)(2)(ii), 2.34(a)(3)(iv) and 2.34(a)(4)(iv), which state that an application may list more than one item of goods or more than one service, provided that the applicant has used or has a bona fide intention to use the mark in commerce on or in connection with all the specified goods or services. This is stated in §§ 2.32(a)(6), 2.33(b)(1) and 2.33(b)(2), and it is unnecessary to repeat it in § 2.34.

The Office proposes to amend § 2.34(a)(4)(i)(A) to require that an application based on section 44(d) of the Act specify the serial number of the foreign application. This incorporates a requirement of Article 4(D)(5) of the Paris Convention, and codifies current practice, as stated in Trademark Manual of Examining Procedure (TMEP) § 1003.

The Office proposes to add a new § 2.34(a)(5), setting forth a request for extension of protection of an international registration under section 66(a) of the Act as a fifth basis for filing a trademark application.

The Office proposes to revise § 2.34(b) to provide that more than one basis can be claimed only in an application under

section 1 or 44 of the Act, and that a basis under section 66(a) of the Act cannot be combined with any other basis.

The Office proposes to revise § 2.35(a) to state that in an application under section 66(a) of the Act, the applicant may not add, substitute or delete a basis, unless the applicant meets the requirements for transformation under section 70(c) of the Act and proposed § 7.31.

The Office proposes to revise § 2.35(b) to set forth the requirements for adding, substituting or deleting a basis in an application under section 1 or section 44 of the Act. This is consistent with current §§ 2.35(a) and 2.35(b).

The Office proposes to redesignate §§ 2.35(c) through 2.35(h) as §§ 2.35(b)(3) through 2.35(b)(8).

The Office proposes to add a new § 2.37(b), requiring that if a mark has color, the applicant must identify the color(s) and describe where they appear on the mark. This is consistent with the requirements for international applications under the Madrid Protocol.

The Office proposes to amend § 2.47 to indicate that an application under section 66(a) of the Act is not eligible for registration on the Supplemental Register. Section 68(a)(4) of the Act provides that registration of an extension of protection of an international registration shall be refused to any mark not eligible for registration on the Principal Register.

The Office proposes to reword § 2.51(d) to simplify the rule and to add a provision that, in an application under section 66(a) of the Act, the drawing of the mark must be a substantially exact representation of the mark that appears in the international registration.

The Office proposes to revise § 2.52 to clarify the types of drawings and format for drawings. There are two types of drawings: (1) Standard character (typed) drawings; and (2) special form drawings. Currently the rules refer to a standard character drawing as a "typed drawing." The Office proposes to use the term "standard character" because this is the term used for international applications under the Madrid Protocol. Proposed § 2.52(a) sets forth the requirements for a standard character drawing, and proposed § 2.52(b) sets forth the requirements for a special form drawing. Additional requirements for drawings filed through TEAS are set forth in proposed § 2.53, and additional requirements for paper drawings are set forth in proposed § 2.54.

Proposed § 2.52(b)(1) requires that if color is claimed as a feature of the mark or if the mark consists only of color, the drawing must show the mark in color.

Currently, the Office does not accept color drawings. Under current rules, to show color in a mark, an applicant must submit a black and white drawing, with a statement identifying the color(s) and describing where they appear in the mark. Alternatively, an applicant may show color by using the lining chart set forth in TMEP § 807.09(b).

Effective November 2, 2003, the Office will accept color drawings, and will require that applicants whose marks comprise color submit a drawing that shows color. The Office will no longer accept black and white drawings with a color claim, or drawings that are "lined for color."

Proposed § 2.52(b)(1) requires that an applicant submit a black and white drawing if color is not claimed as a feature of the mark. This is consistent with the requirements for international applications under the Madrid Protocol.

Proposed § 2.52(b)(1) further requires that applicant name the color(s) and describe where they appear on the mark.

The proposed rule does not prohibit the use of gray tones. The Office will process drawings with gray tones as black and white drawings unless the application includes a statement that applicant is claiming the color gray. Thus, an applicant must submit a color claim if applicant wants to show gray in the mark.

The Office proposes to add § 2.53, setting forth the requirements for a drawing filed through TEAS. Proposed § 2.53(b) requires that applicant attach a digitized image of the mark to the electronic submission. The image must be no larger than 3.15 inches (8 cm) high by 3.15 inches (8 cm) wide; must be in .jpg format; and must be scanned at no less than 250 and no more than 350 dots per inch. The image that is scanned must be made with a pen or by a process that will provide high definition when copied. These requirements are necessary to ensure that the Office database contains a clear and accurate reproduction of the mark. The 8 cm by 8 cm size requirement is consistent with the size requirement for an international application.

The Office proposes to add § 2.54, setting forth the requirements for a paper drawing. These requirements are necessary to ensure that the Office receives an image that can be scanned into its database without losing clarity.

The Office proposes to amend § 2.65 to add a new paragraph (d), stating that, if a refusal or requirement is expressly limited to only certain goods/services and the applicant fails to file a complete response to the refusal or requirement, the application shall be abandoned only as to those particular goods/services.

This is a change in practice. Currently, failure to respond to a refusal that pertains to fewer than all the goods and services, or fewer than all the classes, in an application will result in abandonment of the entire application. See TMEP § 1403.05. This change will result in fewer abandonments and comports with sections 68(c) and 69(a) of the Act, which provide that an application under section 66(a) of the Act is automatically protected with respect to any goods or services for which the Office has not timely notified the IB of a refusal.

The Office proposes to amend § 2.66(a) to require that a petition to revive an abandoned application based on unintentional delay be filed within two months of the mailing date of the notice of abandonment. The Office proposes to remove § 2.66(a)(2), which provides that such a petition may be filed within two months of actual knowledge of the abandonment if the applicant did not receive the notice of abandonment and the applicant was diligent in checking the status of the application.

Effective October 30, 1999, the standard for reviving abandoned applications was changed from "unavoidable delay" to "unintentional delay." See notices at 64 FR 48900 (Sept. 8, 1999) and 1226 TMOG 103 (Sept. 28, 1999). Since that time, there has been a substantial increase in the number of petitions to revive filed in the Office. Third parties may be harmed by the revival of a pending application many months after its abandonment and removal from the Office database. For example, a third party may have searched the Office database and commenced using a mark because the search showed no earlier-filed conflicting marks. Or an examining attorney may have searched the Office database and approved a later-filed application for a conflicting mark because the database indicated that the earlier-filed application was abandoned. To minimize this problem, the Office proposes to adopt a stricter time limit for filing petitions to revive under § 2.66. Moreover, the strict time limits for issuing refusals to requests for extension of protection under section 66(a) of the Act requires greater accuracy of the Office database.

The Office proposes to add a new § 2.72(d), stating that in an application under section 66(a) of the Act, the applicant may amend the description or drawing of the mark only if the proposed amendment does not materially alter the mark, and that the Office will determine whether a proposed amendment materially alters a

mark by comparing the proposed amendment with the description or drawing of the mark in the international application on file at the IB.

The Office proposes to amend § 2.73(a) to add references to applications under sections 44 and 66(a) of the Act. Section 2.73 sets forth the requirements for amendment of an application to recite concurrent use under section 2(d) of the Act.

The Office proposes to add a new § 2.75(c), stating that in an application under section 66(a) of the Act, the applicant may not amend the application to the Supplemental Register. As noted above, section 68(a)(4) of the Act provides that registration of an extension of protection of an international registration shall be refused to any mark not eligible for registration on the Principal Register.

The Office proposes to revise §§ 2.84(a) and (b) to add references to the new filing basis under section 66(a) of the Act. The provisions with respect to jurisdiction over published section 66(a) applications are the same as those in applications under sections 1(a) and 44 of the Act.

The Office proposes to amend §§ 2.101(a), 2.111(a), 2.118 and 2.145(c)(4) to refer to the United States Patent and Trademark Office as Office.

The Office proposes to amend § 2.101(b) to substitute “person” for “entity” to track the statutory language; to make the rule gender neutral; to clarify the definitions of “attorney” and “other authorized representative” by reference to §§ 10.1(c) and 10.14(b), respectively; to clarify that an opposition must be signed; and to indicate that electronic signatures are required for electronically filed oppositions.

The Office proposes to add a new § 2.101(b)(1) and a new § 2.101(b)(2) stating that an opposition to an application based on section 1 or 44 of the Act may be filed either on paper or electronically through ESTTA, but that an opposition to an application based on section 66(a) of the Act may be filed only through ESTTA.

The Office proposes to revise § 2.101(d)(1) through § 2.101(d)(3) and to add new § 2.101(d)(3)(i) through § 2.101(d)(3)(iii) to indicate that the Office will not accept an opposition submitted through ESTTA that does not include fees to cover all named party opposers and all classes opposed; that the Office will not institute an opposition proceeding if an opposition submitted on paper does not include a fee sufficient to pay for one person to oppose the registration of a mark in at least one class; and that the Office will

no longer correspond with an opposer in an opposition submitted on paper to permit submission of additional fees or designation of party opposers and/or classes where an opposition is submitted with insufficient fees to pay for opposition by all party opposers and/or in all classes. The revision explains how the Office will apply a fee accompanying a paper submission that is insufficient to cover all classes and/or to cover all party opposers.

The Office proposes to amend § 2.102(a) to make the rule gender neutral; to clarify the definitions of “attorney” and “authorized representative” by reference to §§ 10.1(c) and 10.14(b), respectively; to clarify that a request to extend the time for filing an opposition must be signed; and to indicate that electronic signatures are required for electronically filed requests to extend the time for filing oppositions.

The Office proposes to add a new § 2.102(a)(1) and a new § 2.102(a)(2) stating that a written request to extend the time for filing an opposition to an application based on section 1 or 44 of the Act may be filed either on paper or electronically through ESTTA, but stating that a request to extend the time for filing an opposition to an application based on section 66(a) of the Act may be filed only through ESTTA.

The Office proposes to revise § 2.102(c) to set out the time frames for extensions of time to oppose and to indicate that the Trademark Trial and Appeal Board will no longer extend a potential opposer’s time to file an opposition beyond 120 days from the date the mark is published for opposition. The Office proposes to add §§ 2.102(c)(1) and (2) to state the requirements concerning the filing of permitted requests to extend the time for filing an opposition.

The Office proposes to remove § 2.102(d), which requires submission of extension requests in triplicate.

The Office proposes to revise § 2.104(a) to remove the requirement that a duplicate copy of the opposition, including exhibits, be filed with an opposition.

The Office proposes to reword the heading for § 2.105 to specify that notification of opposition proceedings is to the parties.

The Office proposes to revise § 2.105 to clarify the definitions of “attorney” and “authorized representative” by reference to §§ 10.1(c) and 10.14(b), respectively; and to indicate that, if no attorney or other authorized representative is appointed, notification will be sent to a party’s domestic representative, or, if there is no

domestic representative, notification will be sent to the party.

The Office proposes to redesignate § 2.107 as § 2.107(a); to limit this paragraph to oppositions against an application filed under section 1 or 44 of the Act; and to state in the rule the Board practice which prohibits an opposer in a proceeding against an application filed under section 1 or 44 of the Act from adding to the goods or services in an opposition after the period for filing the opposition has closed.

The Office proposes to add a new § 2.107(b) to state that pleadings in an opposition proceeding against an application filed under section 66(a) of the Act may be amended in the same manner and to the same extent as in a civil action in a United States district court; except that, once filed, such opposition may not be amended to change or add to the grounds for opposition or to add to the goods or services opposed.

The Office proposes to revise § 2.111(b) to substitute “person” for “entity” to track the statutory language; to make the rule gender neutral; to clarify the definitions of “attorney” and “authorized representative” by reference to §§ 10.1(c) and 10.14(b), respectively; to clarify that an opposition must be signed; and to indicate that electronic signatures are required for electronically filed oppositions.

The Office proposes to revise § 2.111(c) to divide it into four paragraphs; to state that the Office will not accept a petition submitted through ESTTA that does not include fees to cover all named party petitioners and all classes; that the Office will not institute a cancellation proceeding if a petition submitted on paper does not include a fee sufficient to pay for one person for a cancellation in at least one class; and that the Office will no longer correspond with a petitioner in a cancellation submitted on paper to permit submission of additional fees or designation of party petitioners and/or classes where a cancellation is submitted with insufficient fees to pay for cancellation by all party petitioners and/or in all classes. The revision explains how the Office will apply a fee accompanying a paper submission that is insufficient to cover all classes and/or to cover all party petitioners.

The Office proposes to amend § 2.112(a) to substitute “person” for “entity” to track the statutory language; to make the rule gender neutral; and to remove the requirement that a duplicate copy of the petition, including exhibits, be filed with the petition.

The Office proposes to reword the heading for § 2.113 to specify that notification of cancellation proceedings is to the parties.

The Office proposes to revise § 2.113 to divide it into paragraphs (a), (b), (c) and (d) for clarity; to clarify the definitions of "attorney" and "authorized representative" by reference to §§ 10.1(c) and 10.14(b), respectively; and to indicate that, if no attorney or other authorized representative is appointed by a party, notification will be sent to that party's domestic representative, or, if there is no domestic representative for that party, notification will be sent to the party.

The Office proposes to amend § 2.118 to delete reference to a party residing abroad and his representative in the United States in order to clarify that when any notice sent by the Office to a registrant is returned to the Office, notice may be given by publication in the Official Gazette, regardless of whether that registrant resides in the United States or elsewhere.

The Office proposes to amend § 2.123(g)(1) to require that depositions be in written form, but to delete reference to specific requirements that may vary depending upon the media used for submission. Requirements for submissions are specified in proposed § 2.126.

The Office proposes to add new § 2.126, entitled "Form of submissions to the Trademark Trial and Appeal Board," which includes paragraphs (a) through (d). Paragraphs (a) through (c) provide that submissions may be made to the Board on paper, CD-ROM, or electronically, as permitted by the rules contained in this part or Board practice; and specify the requirements for each type of submission. Paragraph (d) specifies the requirements for making a submission to the Board that is confidential in whole or in part.

The Office proposes to amend § 2.127(a) to delete the specifications for filing on paper a brief in support of, or response to, a motion, referring, instead to § 2.126.

The Office proposes to amend § 2.128(b) to require that briefs be in written form; and to delete the specifications for filing a brief on paper, referring, instead to § 2.126.

The Office proposes to amend both the heading and the body of § 2.130 to change "Examiner of Trademarks" to "trademark examining attorney." The Office proposes to revise § 2.130 to provide that, during an inter partes proceeding, only applications under section 1 or section 44 of the Act may be remanded, at the request of the

trademark examining attorney, for consideration of facts which appear to render the mark unregistrable.

The Office proposes to amend § 2.131 to change the term "examiner" to "trademark examining attorney"; and to limit the applicability of this section to inter partes proceedings involving applications under sections 1 and 44 of the Act.

The Office proposes to revise § 2.142(a) and (b)(2) to state that notices of appeal and briefs must be filed in written form, as prescribed in § 2.126, and to delete the specifications for filing a brief on paper.

The Office proposes to amend § 2.145(b)(3) to indicate that notices of appeal to the U.S. Court of Appeals for the Federal Circuit be sent to the Office of the General Counsel, with a duplicate copy addressed to the Board.

The Office proposes to amend § 2.145(c)(3) to indicate that any adverse party to an appeal taken to the U.S. Court of Appeals for the Federal Circuit by a defeated party in an inter partes proceeding who files a notice with the Office as provided in section 21(b) of the Act, must address that notice to the Office of the General Counsel.

The Office proposes to amend § 2.145(c)(4) to indicate that, in order to avoid premature termination of a proceeding, a party who commences a civil action, pursuant to section 21(b) of the Act, must file written notice thereof at the Trademark Trial and Appeal Board.

The Office proposes to amend § 2.146(c) to delete reference to a petition to revive as an example of a situation where an affidavit or declaration is required in support of a petition. This is a technical correction to the rule. Effective October 30, 1999, § 2.66 was amended to delete the requirement for an affidavit or declaration in a petition to revive based on unintentional delay. An unverified statement is sufficient. See notices at 64 FR 48900 (Sept. 8, 1999) and 1226 TMOG 103 (Sept. 28, 1999). However, § 2.146(c) still requires a verified statement in other situations where facts are to be proven on petition. For example, if the petition arises from the loss or misplacement of a document submitted to the Office, it should be accompanied by the affidavit or declaration of the person who mailed the document, attesting to the date of submission and identifying the document filed with the petition as a true copy of the document previously filed. TMEP § 1705.03.

The Office proposes to amend § 2.146(i) to change the standard for a showing of due diligence for petitions in

which the petitioner seeks to reactivate an application or registration that was abandoned, cancelled or expired due to the loss or mishandling of papers. Currently, the rule requires that to be considered diligent, petitioners must check the status of pending matters within one year of the last filing or receipt of a notice from the Office for which further action by the Office is expected. The Office proposes to shorten the time period from one year to six months. A showing of due diligence would require that a petitioner check the status of a pending application every six months between the filing date of the application and issuance of a registration; check the status of a registration every six months after filing an affidavit of use or excusable nonuse under section 8 or 71 of the Act or a renewal application under section 9 of the Act until the petitioner receives notice that the affidavit or renewal application has been accepted; and request corrective action where necessary.

Third parties are harmed by the removal and later reinsertion of an application or registration in the Office database. To minimize this problem, the Office proposes to adopt stricter time limits for the filing of petitions to revive or reinstate abandoned applications and cancelled or expired registrations.

The Office proposes to revise § 2.151 to add a reference to section 71 of the Act, which requires periodic affidavits of use or excusable nonuse to maintain a registration based on an extension of protection of an international registration.

The Office proposes to add a new § 2.171(b), stating that when ownership of a registration has changed with respect to some but not all of the goods and/or services, the registrant(s) may file a request that the registration be physically divided into two or more separate registrations, upon payment of the required fee for each new separate registration created by the division.

Rule Making Requirements

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined not to be significant for purposes of Executive Order 12866.

Regulatory Flexibility Act: The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business

Administration that the proposed rule changes will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The main purpose of the proposed rules is to implement legislation that provides an additional means for filing trademark applications. Additionally, the rules provide for some technical and other changes that will simplify the trademark application process. Hence, the rules merely provide all applicants for trademark registration, including small businesses, with additional benefits.

Paperwork Reduction Act: The proposed rules are in conformity with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). Notwithstanding any other provision of law, no person is required 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 PRA unless that collection of information displays a currently valid OMB control number.

This proposed rule contains collections of information requirements subject to the PRA. This rule adds provisions allowing parties to (1) file applications for international trademark registration with the IB through the Office; (2) file subsequent designations with the IB through the Office; (3) file responses to notices of irregularities in international applications issued by the IB through the Office; (4) request the Office to note in its records that a registered extension of protection of an international registration to the United States replaces a previously issued U.S. registration; (5) file requests to record assignments or restrictions of a holder's right to dispose of an international registration with the IB through the Office; and (6) file a request that the Office transform an extension of protection that was cancelled by the IB into an application for registration in the United States under section 1 or section 44 of the Act. Additionally, the proposed rule sets forth requirements for submitting an affidavit of continued use or excusable nonuse under section 71 of the Act and discusses changes in the information required from the public to file notices of opposition, petitions to cancel, and requests for extensions of time to oppose.

An information collection package supporting the changes to the above information requirements, as set forth in this rule, has been submitted to the Office of Management and Budget for review and approval. Previously, a separate information package was submitted in support of oppositions, requests for extensions of time to file

oppositions, and petitions to cancel. The public reporting burden for this collection of information is estimated to average as follows: fifteen minutes for international trademark applications; three minutes for subsequent designations; ten minutes to respond to notices of irregularities issued by the IB in connection with international applications; two minutes to request that the Office replace a United States registration with a subsequently registered extension of protection to the United States; five minutes for a request to record an assignment or restriction of a holder's right to dispose of an international registration; five minutes for a request that the Office transform a cancelled extension of protection into an application for registration under section 1 or 44 of the Act; fourteen minutes for an affidavit of continued use or excusable nonuse under section 71 of the Act; ten minutes to forty-five minutes for notices of opposition and petitions to cancel, depending on the particular circumstances; and ten minutes for requests for extensions of time to oppose. These time estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 (Attn: Ari Leifman), and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20230 (Attn: PTO Desk Officer).

List of Subjects

37 CFR Part 2

Administrative practice and procedure, Trademarks.

37 CFR Part 7

Administrative practice and procedure, Trademarks.

For the reasons given in the preamble and under the authority contained in 35 U.S.C. 2 and 15 U.S.C. 1123, as

amended, the Office proposes to amend title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR Part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

2. Amend § 2.2 to add new paragraphs (c) through (e), to read as follows:

§ 2.2 Definitions.

* * * * *

(c) The acronym ESTTA means the Electronic System for Trademark Trials and Appeals, available at <http://www.uspto.gov>.

(d) The term international application as used in this part means an application for international registration that is filed under the Madrid Protocol.

(e) The term Office means the United States Patent and Trademark Office.

3. Revise § 2.11 and its heading to read as follows:

§ 2.11 Representation before the Office.

Representation before the Office is governed by § 10.14 of this chapter. The Office cannot aid in the selection of an attorney.

4. Amend § 2.17 by revising paragraph (b) to read as follows:

§ 2.17 Recognition for representation.

* * * * *

(b) Before any authorized representative, as specified in § 10.14(b) of this chapter, will be allowed to take action of any kind with respect to an application, registration or proceeding, a written authorization from the applicant, registrant, party to the proceeding, or other person entitled to prosecute such application or proceeding must be filed.

* * * * *

5. Revise § 2.18 to read as follows:

§ 2.18 Correspondence, with whom held.

(a) If documents are transmitted by an attorney, or a written power of attorney is filed, the Office will send correspondence to the attorney transmitting the documents, or to the attorney designated in the power of attorney, provided that the attorney is an attorney as defined in § 10.1(c) of this chapter.

(b) The Office will not undertake double correspondence. If more than one attorney appears or signs a document, the Office's reply will be sent to the address already established in the record until the applicant, registrant or party, or its duly appointed attorney, requests in writing that correspondence be sent to another address.

(c) If an application, registration or proceeding is not being prosecuted by an attorney but a domestic representative has been appointed, the Office will send correspondence to the domestic representative, unless the applicant, registrant or party designates in writing another correspondence address.

(d) If the application, registration or proceeding is not being prosecuted by an attorney and no domestic representative has been appointed, the Office will send correspondence directly to the applicant, registrant or party, unless the applicant, registrant or party designates in writing another correspondence address.

6. Revise § 2.19 and its heading to read as follows:

§ 2.19 Revocation of power of attorney; withdrawal.

(a) Authority to represent an applicant, registrant or a party to a proceeding may be revoked at any stage in the proceedings of a case upon notification to the Director; and when it is revoked, the Office will communicate directly with the applicant, registrant or party to the proceeding, or with the new attorney or domestic representative if one has been appointed. The Office will notify the person affected of the revocation of his or her authorization.

(b) If the requirements of § 10.40 of this chapter are met, an attorney authorized under § 10.14 of this chapter to represent an applicant, registrant or party in a trademark case may withdraw upon application to and approval by the Director.

7. Amend § 2.21 by revising paragraph (a) introductory text to read as follows:

§ 2.21 Requirements for receiving a filing date.

(a) The Office will grant a filing date to an application under section 1 or section 44 of the Act that contains all of the following:

* * * * *

8. Amend § 2.33 by adding a new paragraph (e) to read as follows:

§ 2.33 Verified statement.

* * * * *

(e) In an application under section 66(a) of the Act, the verified statement is part of the international registration on file at the International Bureau.

9. Amend § 2.34 by removing paragraphs (a)(1)(v), (a)(3)(iv) and (a)(4)(iv), revising paragraphs (a) introductory text, (a)(2), (a)(4)(i)(A), and (b), and adding a new paragraph (a)(5), to read as follows:

§ 2.34 Bases for filing.

(a) The application must include one or more of the following five filing bases:

(1) * * *

(2) Intent-to-use under section 1(b) of the Act. In an application under section 1(b) of the Act, the applicant must verify that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

(3) * * *

(4) * * *

(i) * * *

(A) Specify the filing date, serial number and country of the first regularly filed foreign application; or
* * * * *

(5) Extension of protection of an international registration under section 66(a) of the Act. In an application under section 66(a) of the Act, the international application or subsequent designation requesting an extension of protection to the United States must contain a verified statement that the applicant has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application.

(b)(1) In an application under section 1 or section 44 of the Act, an applicant may claim more than one basis, provided the applicant satisfies all requirements for the bases claimed. However, the applicant may not claim both sections 1(a) and 1(b) for the identical goods or services in the same application.

(2) In an application under section 1 or section 44 of the Act, if an applicant claims more than one basis, the applicant must list each basis, followed by the goods or services to which that basis applies. If some or all of the goods or services are covered by more than one basis, this must be stated.

(3) A basis under section 66(a) of the Act cannot be combined with any other basis.

* * * * *

10. Revise § 2.35 to read as follows:

§ 2.35 Adding, deleting, or substituting bases.

(a) In an application under section 66(a) of the Act, an applicant may not add, substitute or delete a basis, unless the applicant meets the requirements for transformation under section 70(c) of the Act and § 7.31 of this chapter.

(b) In an application under section 1 or section 44 of the Act:

(1) Before publication for opposition, an applicant may add or substitute a basis, if the applicant meets all requirements for the new basis, as stated in § 2.34. The applicant may delete a basis at any time.

(2) After publication, an applicant may add or substitute a basis in an application that is not the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board, but only with the express permission of the Director, after consideration on petition. Republication will be required. The amendment of an application that is the subject of an *inter partes* proceeding before the Board is governed by § 2.133(a).

(3) When an applicant substitutes one basis for another, the Office will presume that there was a continuing valid basis, unless there is contradictory evidence in the record, and the application will retain the original filing date, including a priority filing date under section 44(d), if appropriate.

(4) If an applicant properly claims a section 44(d) basis in addition to another basis, the applicant will retain the priority filing date under section 44(d) no matter which basis the applicant perfects.

(5) The applicant may add or substitute a section 44(d) basis only within the six-month priority period following the filing date of the foreign application.

(6) When the applicant adds or substitutes a basis, the applicant must list each basis, followed by the goods or services to which that basis applies.

(7) When the applicant deletes a basis, the applicant must also delete any goods or services covered solely by the deleted basis.

(8) Once an applicant claims a section 1(b) basis as to any or all of the goods or services, the applicant may not amend the application to seek registration under section 1(a) of the Act for those goods or services unless the applicant files an allegation of use under section 1(c) or section 1(d) of the Act.

11. Revise § 2.37 to read as follows:

§ 2.37 Description of mark.

(a) A description of the mark, which must be acceptable to the trademark examining attorney, may be included in the application, and must be included if required by the examining attorney.

(b) If a mark is displayed in color or a color combination, the applicant must name the color(s), and describe where the color(s) appear on the mark.

12. Amend § 2.47 by redesignating paragraphs (c) and (d) as (d) and (e) and

adding a new paragraph (c) to read as follows:

§ 2.47 Supplemental Register.

* * * * *

(c) An application under section 66(a) of the Act is not eligible for registration on the Supplemental Register.

* * * * *

13. Revise § 2.51 to read as follows:

§ 2.51 Drawing required.

(a) In an application under section 1(a) of the Act, the drawing of the mark must be a substantially exact representation of the mark as used on or in connection with the goods and/or services.

(b) In an application under section 1(b) of the Act, the drawing of the mark must be a substantially exact representation of the mark as intended to be used on or in connection with the goods and/or services specified in the application, and once an amendment to allege use under § 2.76 or a statement of use under § 2.88 has been filed, the drawing of the mark must be a substantially exact representation of the mark as used on or in connection with the goods and/or services.

(c) In an application under section 44 of the Act, the drawing of the mark must be a substantially exact representation of the mark as it appears in the drawing in the registration certificate of a mark duly registered in the applicant's country of origin.

(d) In an application under section 66(a) of the Act, the drawing of the mark must be a substantially exact representation of the mark as it appears in the international registration.

14. Revise § 2.52 to read as follows:

§ 2.52 Types of drawings and format for drawings.

A drawing depicts the mark sought to be registered. The drawing must show only one mark. The applicant must include a clear drawing of the mark when the application is filed. There are two types of drawings:

(a) Standard character (typed) drawing. Applicants who seek to register words, letters, numbers, or any combination thereof without claim to any particular font style must submit a standard character drawing. An applicant may submit a standard character drawing if:

(1) The application includes a statement that the mark is in standard characters and no claim is made to any particular font style;

(2) The mark does not include a design element;

(3) All letters and words in the mark are depicted in Latin characters;

(4) All numerals in the mark are depicted in Roman or Arabic numerals; and

(5) The mark includes only common punctuation or diacritical marks.

(b) Special form drawing. Applicants who seek to register a mark that includes a two or three-dimensional design; or color; or words, letters, or numbers in a particular style of lettering; or a mark that does not meet the requirements of paragraph (a) must submit a special form drawing.

(1) Color marks. When color is claimed as a feature of the mark or if the mark consists only of color, the drawing must show the mark in color, and the applicant must name the color(s), and describe where the color(s) appear on the mark. If color is not claimed as a feature of the mark, the applicant must submit a black and white drawing.

(2) Three dimensional marks. If the mark has three-dimensional features, the drawing must depict a single rendition of the mark, and the applicant must indicate that the mark is three-dimensional.

(3) Motion mark. If the mark has motion, the drawing may depict a single point in the movement, or the drawing may depict up to five freeze frames showing various points in the movement, whichever best depicts the commercial impression of the mark. The applicant must also describe the mark.

(4) If necessary to adequately depict the commercial impression of the mark, the applicant may be required to submit a drawing that shows the placement of the mark by surrounding the mark with a proportionately accurate broken-line representation of the particular goods, packaging, or advertising on which the mark appears. The applicant must also use broken lines to show any other matter not claimed as part of the mark. For any drawing using broken lines to indicate placement of the mark, or matter not claimed as part of the mark, the applicant must describe the mark and explain the purpose of the broken lines.

(5) If a drawing cannot adequately depict all significant features of the mark, the applicant must also describe the mark.

(c) A drawing filed through TEAS must meet the requirements of § 2.53.

(d) A paper drawing must meet the requirements of § 2.54.

(e) Sound, scent, and non-visual marks. An applicant is not required to submit a drawing if the mark consists only of a sound, a scent, or other completely non-visual matter. For these types of marks, the applicant must submit a detailed description of the mark.

15. Add § 2.53 to read as follows:

§ 2.53 Requirements for drawings filed through the Trademark Electronic Application System (TEAS).

The drawing must meet the requirements of § 2.52. In addition, in a TEAS application, the drawing must meet the following requirements:

(a) Standard character drawings: If an applicant is filing a standard character drawing, the applicant must enter the mark in the appropriate box. The applicant must indicate that the mark is in standard characters and that no claim is made to any particular font style.

(b) Special form drawings: If an applicant is filing a special form drawing, the applicant must attach a digitized image of the mark to the electronic submission.

(c) Requirements for digitized images: The image must be no larger than 3.15 inches (8 cm) high by 3.15 inches (8 cm) wide; must be in .jpg format; and must be scanned at no less than 250 and no more than 350 dots per inch. The image that is scanned must be made with a pen or by a process that will provide high definition when copied. A photolithographic, printer's proof copy, or other high quality reproduction of the mark may be used. All lines must be clean, sharp and solid, and must not be fine or crowded.

16. Add § 2.54 to read as follows:

§ 2.54 Requirements for drawings submitted on paper.

The drawing must meet the requirements of § 2.52. In addition, in a paper application, the drawing should:

(a) Be on non-shiny white paper that is separate from the application;

(b) Be on paper that is 8 to 8.5 inches (20.3 to 21.6 cm.) wide and 11 to 11.69 inches (27.9 to 29.7 cm.) long. One of the shorter sides of the sheet should be regarded as its top edge. The image must be no larger than 3.15 inches (8 cm) high by 3.15 inches (8 cm) wide;

(c) Include the caption "DRAWING PAGE" at the top of the drawing beginning one inch (2.5 cm.) from the top edge; and

(d) Depict the mark in black ink, or in color if color is claimed as a feature of the mark.

(e) Drawings must be typed or made with a pen or by a process that will provide high definition when copied. A photolithographic, printer's proof copy, or other high quality reproduction of the mark may be used. All lines must be clean, sharp and solid, and must not be fine or crowded.

17. Amend § 2.65 by revising paragraph (a) to read as follows:

§ 2.65 Abandonment.

(a) If an applicant fails to respond, or to respond completely, within six months after the date an action is mailed, the application shall be deemed abandoned unless the refusal or requirement is expressly limited to only certain goods and/or services. If the refusal or requirement is expressly limited to only certain goods and/or services, the application will be abandoned only as to those particular goods/services. A timely petition to the Director pursuant to §§ 2.63(b) and 2.146, if appropriate, is a response that avoids abandonment of an application.

* * * * *

18. Amend § 2.66 by revising paragraph (a) to read as follows:

§ 2.66 Revival of abandoned applications.

(a) An applicant may file a petition to revive an application abandoned because applicant did not timely respond to an Office action or notice of allowance, if the delay was unintentional. The applicant must file the petition within two months of the mailing date of the notice of abandonment.

* * * * *

19. Amend § 2.72 to add a new paragraph (d) to read as follows:

§ 2.72 Amendments to description or drawing of the mark.

* * * * *

(d) In an application under section 66(a) of the Act, the applicant may amend the description or drawing of the mark only if the proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark in the international registration.

20. Amend § 2.73 by revising paragraph (a) to read as follows:

§ 2.73 Amendment to recite concurrent use.

(a) An application under section 1(a), section 44, or section 66(a) of the Act may be amended to an application for concurrent use registration, provided the application as amended satisfies the requirements of § 2.42. The trademark examining attorney will determine whether the application, as amended, is acceptable.

* * * * *

21. Amend § 2.75 to add a new paragraph (c) to read as follows:

§ 2.75 Amendment to change application to different register.

* * * * *

(c) In an application under section 66(a) of the Act, the applicant may not amend the application to the Supplemental Register.

22. Revise § 2.84 to read as follows:

§ 2.84 Jurisdiction over published applications.

(a) The trademark examining attorney may exercise jurisdiction over an application up to the date the mark is published in the Official Gazette. After publication of an application under section 1(a), 44 or 66(a) of the Act the trademark examining attorney may, with the permission of the Director, exercise jurisdiction over the application. After publication of an application under section 1(b) of the Act, the trademark examining attorney may exercise jurisdiction over the application after the issuance of the notice of allowance under section 13(b)(2) of the Act. After publication, and prior to issuance of a notice of allowance in an application under section 1(b), the trademark examining attorney may, with the permission of the Director, exercise jurisdiction over the application.

(b) After publication, but before the certificate of registration in an application under section 1(a), 44 or 66(a) of the Act is printed, or before the notice of allowance in an application under section 1(b) of the Act is printed, an application that is not the subject of an inter partes proceeding before the Trademark Trial and Appeal Board may be amended if the amendment does not necessitate republication of the mark or issuance of an Office action. Otherwise, an amendment to such an application may be submitted only upon petition to the Director to restore jurisdiction over the application to the trademark examining attorney for consideration of the amendment and further examination. The amendment of an application that is the subject of an inter partes proceeding before the Trademark Trial and Appeal Board is governed by § 2.133.

23. Revise § 2.101 to read as follows:

§ 2.101 Filing an opposition.

(a) An opposition proceeding is commenced by filing a timely opposition, together with the required fee, in the Office.

(b) Any person who believes that he, she or it would be damaged by the registration of a mark on the Principal Register may file an opposition addressed to the Trademark Trial and Appeal Board. The opposition need not be verified, and must be signed by the opposer or the opposer's attorney, as specified in § 10.1(c) of this chapter, or

other authorized representative, as specified in § 10.14(b) of this chapter. Electronic signatures pursuant to § 1.4(d)(1)(iii) of this chapter are required for oppositions submitted electronically under paragraphs (b)(1) or (2) of this section.

(1) An opposition to an application based on section 1 or 44 of the Act must be filed either on paper or through ESTTA.

(2) An opposition to an application based on section 66(a) of the Act must be filed through ESTTA.

(c) The opposition must be filed within thirty days after publication (§ 2.80) of the application being opposed or within an extension of time (§ 2.102) for filing an opposition.

(d)(1) The opposition must be accompanied by the required fee for each party joined as opposer for each class in the application for which registration is opposed (see § 2.6).

(2) A timely opposition submitted through ESTTA will not be accepted if it is accompanied by a fee that is insufficient to pay in full for each named party opposer to oppose the registration of a mark in each class specified in the opposition.

(3) If a timely opposition is submitted on paper, the following is applicable if less than all required fees are submitted:

(i) If the opposition is accompanied by no fee or a fee insufficient to pay for one person to oppose the registration of a mark in at least one class, the opposition will be refused.

(ii) If the opposition is accompanied by fees sufficient to pay for one person to oppose registration in at least one class, but fees are insufficient to oppose registration in all the classes in the application, and the particular class or classes against which the opposition is filed are not specified, the opposition will be presumed to be against the class or classes in ascending numerical order, including only the number of classes in the application for which sufficient fees have been submitted.

(iii) If persons are joined as party opposers, each must submit a fee for each class for which opposition is sought. If the fees submitted are sufficient to pay for one person to oppose registration in at least one class, but are insufficient for each named party opposer, the first-named party will be presumed to be the party opposer. Additional parties will be deemed to be party opposers only to the extent that the fees submitted are sufficient to pay the fee due for each party opposer. If persons are joined as party opposers against a multiple class application, the fees submitted are insufficient, and no specification of opposers and classes is

made at the time the party is joined, the fees submitted will be applied first on behalf of the first-named opposer against as many of the classes in the application as the submitted fees are sufficient to pay. Any excess will be applied on behalf of the second-named party to the opposition against the classes in the application in ascending numerical order.

24. Revise § 2.102 to read as follows:

§ 2.102 Extension of time for filing an opposition.

(a) Any person who believes that he, she or it would be damaged by the registration of a mark on the Principal Register may file a written request to extend the time for filing an opposition. The written request must be signed by the potential opposer or by the potential opposer's attorney, as specified in § 10.1(c) of this chapter, or authorized representative, as specified in § 10.14(b) of this chapter. Electronic signatures pursuant to § 1.4(d)(1)(iii) of this chapter are required for electronically filed extension requests.

(1) A written request to extend the time for filing an opposition to an application filed under section 1 or 44 of the Act must be filed either on paper or through ESTTA.

(2) A written request to extend the time for filing an opposition to an application filed under section 66(a) of the Act must be filed through ESTTA.

(b) A written request to extend the time for filing an opposition must identify the potential opposer with reasonable certainty. Any opposition filed during an extension of time should be in the name of the person to whom the extension was granted. An opposition may be accepted if the person in whose name the extension was requested was misidentified through mistake or if the opposition is filed in the name of a person in privity with the person who requested and was granted the extension of time.

(c) A person may file no more than two requests to extend the time for filing an opposition. The time for filing an opposition shall not be extended beyond 120 days from the date of publication. A request to extend the time for filing an opposition must be filed in the Office and addressed to the Trademark Trial and Appeal Board.

(1) If two consecutive requests to extend the time for filing an opposition are filed:

(i) A first request for an extension of time for thirty days must be filed before thirty days have expired from the date of publication, and will be granted upon request; and

(ii) A second request for an extension of time for sixty days must be filed before the previously granted thirty-day extension of time has expired, and will be granted by the Board only for good cause shown. No further extensions of time to file an opposition will be granted under any circumstances.

(2) Alternatively, a potential opposer may file a single request for an extension of time for 90 days for good cause shown. Such a request must be filed before thirty days have expired from the date of publication, and will be granted by the Board only for good cause shown. If a potential opposer does not show good cause, the Board will treat the request as a first request for extension of time for thirty days under § 2.102(c)(1).

25. Revise § 2.104(a) to read as follows:

§ 2.104 Contents of opposition.

(a) The opposition must set forth a short and plain statement showing why the opposer believes it would be damaged by the registration of the opposed mark and state the grounds for opposition.

* * * * *

26. Revise § 2.105 and its heading to read as follows:

§ 2.105 Notification to parties of opposition proceeding(s).

When an opposition in proper form has been filed and the correct fee(s) has been submitted, the Trademark Trial and Appeal Board shall prepare a notification, which shall identify the title and number of the proceeding and the application involved and shall designate a time, not less than thirty days from the mailing date of the notification, within which an answer must be filed. A copy of the notification shall be forwarded to opposer's attorney, as defined in § 10.1(c) of this chapter, or other authorized representative, as defined in § 10.14(b) of this chapter, if any, or to opposer's domestic representative, if any, or to opposer. The Board shall forward a copy of the opposition and any exhibits with a copy of the notification to applicant's attorney, other authorized representative, or domestic representative, if any, or to the applicant.

27. Revise § 2.107 to read as follows:

§ 2.107 Amendment of pleadings in an opposition proceeding.

(a) Pleadings in an opposition proceeding against an application filed under sections 1 or 44 of the Act may be amended in the same manner and to the same extent as in a civil action in

a United States district court, except that, after the close of the time period for filing an opposition including any extension of time for filing an opposition, an opposition may not be amended to add to the goods or services opposed.

(b) Pleadings in an opposition proceeding against an application filed under section 66(a) of the Act, may be amended in the same manner and to the same extent as in a civil action in a United States district court, except that, once filed, the opposition may not be amended to change or add to the grounds for opposition or to add to the goods or services opposed.

28. Revise § 2.111 to read as follows:

§ 2.111 Filing petition for cancellation.

(a) A cancellation proceeding is commenced by the filing of a timely petition for cancellation, together with the required fee, in the Office.

(b) Any person who believes that he, she or it is or will be damaged by a registration may file a petition, addressed to the Trademark Trial and Appeal Board, to cancel the registration in whole or in part. The petition need not be verified, and must be signed by the petitioner or the petitioner's attorney, as specified in § 10.1(c) of this chapter, or other authorized representative, as specified in § 10.14(b) of this chapter. Electronic signatures pursuant to § 1.4(d)(1)(iii) of this chapter are required for petitions submitted electronically. * * *

(c)(1) The petition must be accompanied by the required fee for each party joined as petitioner for each class in the registration for which cancellation is sought (see § 2.6).

(2) A petition submitted through ESTTA will not be accepted if it is accompanied by a fee that is insufficient to pay in full for each named party petitioner and for each class specified in the petition.

(3) If the petition is submitted on paper, the following is applicable if less than all required fees are submitted:

(i) If the petition is accompanied by no fee or a fee insufficient to pay for one person for a cancellation in at least one class, the cancellation will be refused.

(ii) If the petition is accompanied by fees sufficient to pay for one person for a cancellation in at least one class, but fees are insufficient for a cancellation against all the classes in the registration, and the particular class or classes against which the cancellation is filed are not specified, the cancellation will be presumed to be against the class or classes in ascending numerical order, including only the number of classes in

the registration for which sufficient fees have been submitted.

(iii) If persons are joined as party petitioners, each must submit a fee for each class for which cancellation is sought. If the fees submitted are sufficient to pay for one person to oppose registration in at least one class but are insufficient for each named party petitioner, the first-named party will be presumed to be the party petitioner. Additional parties will be deemed to be party petitioners only to the extent that the fees submitted are sufficient to pay the fee due for each party petitioner. If persons are joined as party petitioners against a multiple class registration, the fees submitted are insufficient, and no specification of parties and classes is made at the time the party is joined, the fees submitted will be applied first on behalf of the first-named petitioner against as many of the classes in the registration as the submitted fees are sufficient to pay. Any excess will be applied on behalf of the second-named party to the cancellation against the classes in the application in ascending numerical order.

(4) The filing date of the petition is the date of receipt in the Office of the petition together with the required fee.

29. Revise § 2.112 to read as follows:

§ 2.112 Contents of petition for cancellation.

(a) The petition must set forth a short and plain statement showing why the petitioner believes he, she or it is or will be damaged by the registration, state the grounds for cancellation, and indicate, to the best of petitioner's knowledge, the name and address of the current owner of the registration.

(b) When appropriate, petitions to cancel different registrations owned by the same party may be joined in a consolidated petition. The required fee must be included for each party joined as a petitioner for each class sought to be cancelled in each registration against which the petition to cancel is filed.

30. Revise § 2.113 and its heading to read as follows:

§ 2.113 Notification to parties of cancellation proceeding.

(a) When a petition for cancellation has been filed in proper form (see §§ 2.111 and 2.112), the Trademark Trial and Appeal Board shall prepare a notification which shall identify the title and number of the proceeding and the registration(s) involved and shall designate a time, not less than thirty days from the mailing date of the notification, within which an answer must be filed. A copy of the notification shall be forwarded to petitioner's

attorney, as defined in § 10.1(c) of this chapter, or other authorized representative, as defined in § 10.14(b) of this chapter, if any, or to petitioner's domestic representative, if any, or to the petitioner. The Board shall forward a copy of the petition to cancel and any exhibits with a copy of the notification to the respondent (see § 2.118).

(b) The respondent shall be the party shown by the records of the Office to be the current owner of the registration(s) sought to be cancelled, except that the Board, in its discretion, may join or substitute as respondent a party who makes a showing of a current ownership interest in such registration(s).

(c) When the party identified by the petitioner, pursuant to § 2.112(a), as the current owner of the registration(s) is not the record owner, a courtesy copy of the petition for cancellation shall be forwarded with a copy of the notification to the alleged current owner. The alleged current owner may file a motion to be joined or substituted as respondent.

(d) If the petition is found to be defective as to form, the party filing the petition shall be advised and allowed reasonable time for correcting the informality.

31. Revise § 2.118 to read as follows:

§ 2.118 Undelivered Office notices.

When a notice sent by the Office to any registrant is returned to the Office undelivered, additional notice may be given by publication in the Official Gazette for the period of time prescribed by the Director.

32. Amend § 2.123 by revising paragraph (g)(1) to read as follows:

§ 2.123 Trial testimony in inter partes cases.

* * * * *

(g) Form of deposition. (1) The pages of each deposition must be numbered consecutively, and the name of the witness plainly and conspicuously written at the top of each page. A deposition must be in written form. The questions propounded to each witness must be consecutively numbered unless the pages have numbered lines. Each question must be followed by its answer.

* * * * *

33. Add new § 2.126 to read as follows:

§ 2.126 Form of submissions to the Trademark Trial and Appeal Board.

(a) Submissions may be made to the Trademark Trial and Appeal Board on paper where the rules in this part or Board practice permit. A paper submission, including exhibits and

depositions, must meet the following requirements:

(1) A paper submission must be printed in at least 11-point type and double-spaced, with text on one side only of each sheet;

(2) A paper submission must be 8 to 8.5 inches (20.3 to 21.6 cm.) wide and 11 to 11.69 inches (27.9 to 29.7 cm.) long, and contain no tabs or other such devices extending beyond the edges of the paper;

(3) If a paper submission contains dividers, the dividers must not have any extruding tabs or other devices, and must be on the same size and weight paper as the submission;

(4) A paper submission must not be stapled or bound;

(5) All pages of a paper submission must be numbered and exhibits shall be identified in the manner prescribed in § 2.123(g)(2);

(6) Exhibits pertaining to a paper submission must be filed on paper or CD-ROM concurrently therewith, and comply with the requirements for a paper or CD-ROM submission.

(b) Submissions may be made to the Trademark Trial and Appeal Board on CD-ROM where the rules in this part or Board practice permit. A CD-ROM submission must identify the parties and case number and contain a list that clearly identifies the documents and exhibits contained thereon. This information must appear in the data contained in the CD-ROM itself, on a label affixed to the CD-ROM, and on the packaging for the CD-ROM. Text in a CD-ROM submission must be in at least 11-point type and double-spaced. A brief filed on CD-ROM must be accompanied by a single paper copy of the brief. A CD-ROM submission must be accompanied by a transmittal letter on paper that identifies the parties, the case number and the contents of the CD-ROM.

(c) Submissions may be made to the Trademark Trial and Appeal Board electronically via the Internet where the rules in this part or Board practice permit, according to the parameters established by the Board and published at <http://www.uspto.gov>. Text in an electronic submission must be in at least 11-point type and double-spaced. Exhibits pertaining to an electronic submission must be made electronically as an attachment to the submission.

(d) To be handled as confidential, submissions to the Trademark Trial and Appeal Board that are confidential in whole or part pursuant to § 2.125(e), must be submitted under a separate cover. Both the submission and its cover must be marked confidential and identify the case number and the

parties. A copy of the submission with the confidential portions redacted must be submitted.

34. Revise § 2.127(a) to read as follows:

§ 2.127 Motions.

(a) Every motion shall be submitted in written form and must meet the requirements prescribed in § 2.126. It shall contain a full statement of the grounds, and shall embody or be accompanied by a brief. Except as provided in paragraph (e)(1) of this section, a brief in response to a motion shall be filed within fifteen days from the date of service of the motion unless another time is specified by the Trademark Trial and Appeal Board, or the time is extended by stipulation of the parties approved by the Board, or upon motion granted by the Board, or upon order of the Board. If a motion for an extension is denied, the time for responding to the motion remains as specified under this section, unless otherwise ordered. The Board may, in its discretion, consider a reply brief. Except as provided in paragraph (e)(1) of this section, a reply brief, if filed, shall be filed within fifteen days from the date of service of the brief in response to the motion. The time for filing a reply brief will not be extended. No further papers in support of or in opposition to a motion will be considered by the Board. The brief in support of a motion and the brief in response to the motion shall not exceed twenty-five pages in length, and a reply brief shall not exceed ten pages in length. Exhibits submitted in support of or in opposition to a motion shall not be deemed to be part of the brief for purposes of determining the length of the brief. When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded. An oral hearing will not be held on a motion except on order by the Board.

* * * * *

35. Amend § 2.128 by revising paragraph (b) to read as follows:

§ 2.128 Briefs at final hearing.

* * * * *

(b) Briefs must be submitted in written form and must meet the requirements prescribed in § 2.126. Each brief shall contain an alphabetical index of cited cases. Without prior leave of the Trademark Trial and Appeal Board, a main brief on the case shall not exceed fifty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary; and a

reply brief shall not exceed twenty-five pages in its entirety.

36. Revise § 2.130 and its heading to read as follows:

§ 2.130 New matter suggested by the trademark examining attorney.

If, while an inter partes proceeding involving an application under section 1 or 44 of the Act is pending, facts appear which, in the opinion of the trademark examining attorney, render the mark in the application unregistrable, the facts should be called to the attention of the Trademark Trial and Appeal Board. The Board may suspend the proceeding and refer the application to the trademark examining attorney for an ex parte determination of the question of registrability. A copy of the trademark examining attorney's final action will be furnished to the parties to the inter partes proceeding following the final determination of registrability by the trademark examining attorney or the Board on appeal. The Board will consider the application for such further inter partes action as may be appropriate.

37. Revise § 2.131 to read as follows:

§ 2.131 Remand after decision in inter partes proceeding.

If, during an inter partes proceeding involving an application under section 1 or 44 of the Act, facts are disclosed which appear to render the mark unregistrable, but such matter has not been tried under the pleadings as filed by the parties or as they might be deemed to be amended under Rule 15(b) of the Federal Rules of Civil Procedure to conform to the evidence, the Trademark Trial and Appeal Board, in lieu of determining the matter in the decision on the proceeding, may remand the application to the trademark examining attorney for reexamination in the event the applicant ultimately prevails in the inter partes proceeding. Upon remand, the trademark examining attorney shall reexamine the application in light of the reference by the Board. If, upon reexamination, the trademark examining attorney finally refuses registration to the applicant, an appeal may be taken as provided by §§ 2.141 and 2.142.

38. Amend § 2.142 by revising paragraphs (a) and (b)(2) to read as follows:

§ 2.142 Time and manner of ex parte appeals.

(a) Any appeal filed under the provisions of § 2.141 must be filed within six months from the date of the final refusal or the date of the action from which the appeal is taken. An appeal is taken by filing a notice of

appeal in written form, as prescribed in § 2.126, and paying the appeal fee.

(b) * * *

(2) Briefs must be submitted in written form and must meet the requirements prescribed in § 2.126. Each brief shall contain an alphabetical index of cited cases. Without prior leave of the Trademark Trial and Appeal Board, a brief shall not exceed twenty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary.

* * * * *

39. Amend § 2.145 by revising paragraphs (b)(3), (c)(3) and (c)(4) to read as follows:

§ 2.145 Appeal to court and civil action.

* * * * *

(b) * * *

(3) The notice, if mailed to the Office, shall be addressed as follows: Office of the General Counsel, P.O. Box 15667, Arlington, Virginia 22215, and should include a duplicate copy addressed to the Trademark Trial and Appeal Board.

(c) * * *

(3) Any adverse party to an appeal taken to the U.S. Court of Appeals for the Federal Circuit by a defeated party in an inter partes proceeding may file a notice with the Office, addressed to the Office of the General Counsel, within twenty days after the filing of the defeated party's notice of appeal to the court (paragraph (b) of this section), electing to have all further proceedings conducted as provided in section 21(b) of the Act. The notice of election must be served as provided in § 2.119.

(4) In order to avoid premature termination of a proceeding, a party who commences a civil action, pursuant to section 21(b) of the Act, must file written notice thereof at the Trademark Trial and Appeal Board.

* * * * *

40. Amend § 2.146 by revising paragraphs (c) and (i) to read as follows:

§ 2.146 Petitions to the Director.

* * * * *

(c) Every petition to the Director shall include a statement of the facts relevant to the petition, the points to be reviewed, the action or relief that is requested, and the fee required by § 2.6. Any brief in support of the petition shall be embodied in or accompany the petition. When facts are to be proved in *ex parte* cases, proof in the form of affidavits or declarations in accordance with § 2.20, and any exhibits, shall accompany the petition.

* * * * *

(i) Where a petitioner seeks to reactivate an application or registration that was abandoned, cancelled or expired because papers were lost or mishandled, the Director may deny the petition if the petitioner was not diligent in checking the status of the application or registration. To be considered diligent, a petitioner must:

(1) During the pendency of an application, check the status of the application every six months between the filing date of the application and issuance of a registration;

(2) After filing an affidavit of use or excusable nonuse under section 8 or 71 of the Act, or a renewal application under section 9 of the Act, check the status of the registration every six months until the petitioner receives notice that the affidavit or renewal application has been accepted; and

(3) If the status check reveals that the Office has not received a paper filed by the petitioner, or that the Office has issued an action or notice that the petitioner has not received, the petitioner must request corrective action.

* * * * *

41. Revise § 2.151 to read as follows:

§ 2.151 Certificate.

When the Office determines that a mark is registrable, the Office will issue a certificate stating that the applicant is entitled to registration on the Principal Register or on the Supplemental Register. The certificate will state the application filing date, the act under which the mark is registered, the date of issue, and the number of the registration. A reproduction of the mark and pertinent data from the application will be sent with the certificate. A notice of the requirements of sections 8 and 71 of the Act will accompany the certificate.

42. Revise § 2.171 to read as follows:

§ 2.171 New certificate on change of ownership.

(a) If the ownership of a registered mark changes, the assignee may request that a new certificate of registration be issued in the name of the assignee for the unexpired part of the original period. The assignment must be recorded in the Office, and the request for the new certificate must be signed by the assignee and accompanied by the fee required by § 2.6(a)(8). If available, the original certificate of registration must be submitted.

(b) When ownership of a registration has changed with respect to some, but not all, of the goods and/or services, the registrant(s) may file a request that the registration be physically divided into

two or more separate registrations. The fee required by § 2.6(a)(8) must be paid for each new separate registration created by the division, and the change of ownership must be recorded in the Office.

43. Add a new part 7, to read as follows:

PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE MADRID PROTOCOL

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

Subpart A—General Information

§ 7.1 Definitions of terms as used in this part.

(a) *The Act* means the Trademark Act of 1946, 60 Stat. 427, as amended, codified in 15 U.S.C. 1051 *et seq.*

(b) *Subsequent designation* means a request for extension of protection of an international registration to a Contracting Party made after international registration.

(c) The acronym *TEAS* means the Trademark Electronic Application System available online through the Office's web site at: www.uspto.gov.

(d) The term *Office* means the United States Patent and Trademark Office.

§ 7.3 Correspondence must be in English.

All correspondence relating to international applications and registrations and requests for extension of protection filed in the Office must be in English. The Office will not process correspondence that is in a language other than English.

§ 7.4 Receipt of correspondence.

Correspondence relating to international applications and registrations and requests for extension of protection transmitted electronically will be accorded the date and time on which the complete transmission is received in the Office based on Eastern Time. Eastern Time means eastern standard time or eastern daylight time, as appropriate.

§ 7.6 Schedule of U.S. process fees.

(a) The Office requires the following process fees:

(1) For certifying an international application based on a single basic application or registration, per class—\$100.00

(2) For certifying an international application based on more than one basic application or registration, per class—\$150.00

(3) For transmitting a request to record an assignment or restriction under § 7.23 or § 7.24+\$100.00

(4) For filing a notice of replacement, per class—\$100.00

(5) For filing an affidavit under section 71 of the Act, per class—\$100.00

(6) Surcharge for filing an affidavit under section 71 of the Act during the grace period, per class—\$100.00

(7) For transmitting a subsequent designation—\$100.00

(b) The fees required in paragraph (a) of this section must be paid in U.S. dollars at the time of filing. See § 1.23 of this chapter for acceptable forms of payment and § 1.24 of this chapter for payments using a deposit account established in the Office.

§ 7.7 Payments of fees to International Bureau.

(a) The schedule of fees required by the International Bureau and fee calculator may be viewed online at: <http://www.wipo.int/madrid>.

(b) The following fees required by the International Bureau may be paid either directly to the International Bureau or through the Office:

(1) International application fee;

(2) Fee for correcting irregularities in an international application;

(3) Subsequent designation fee; and

(4) Recording fee for an assignment of or restriction to an international registration under § 7.23 or § 7.24.

(c) The fees required in paragraph (b) of this section may be paid as follows:

(1)(i) Directly to the International Bureau by debit to a current account with the International Bureau. As proof of payment in this case, an applicant or holder's submission to the Office must include the International Bureau account number; or

(ii) Directly to the International Bureau using any other method of payment. As proof of payment in this case, an applicant or holder's submission to the Office must include the International Bureau receipt number for payment of the fees; or

(2) Through the Office. Fees paid through the Office must be paid in U.S. dollars at the time of submission. See § 1.23 of this chapter for acceptable forms of payment and § 1.24 of this chapter for payments using a deposit account established in the Office.

Subpart B—International Application Originating From the United States

§ 7.11 Requirements for international application originating from the United States.

(a) The Office will grant a date of receipt to an international application that is submitted through TEAS and contains all of the following:

(1) The filing date and serial number of the basic application and/or the

registration date and registration number of the basic registration;

(2) The name and address of the international applicant that are identical to the name and address of the applicant or registrant as they appear in the basic application or basic registration;

(3) A reproduction of the mark that is identical to the mark in the basic application and/or registration and meets the requirements of § 2.52 of this chapter. If the mark in the basic application and/or registration is depicted in black and white, the mark in the international application must be black and white. If the mark in the basic application and/or registration is depicted in color, the mark in the international application must be in color;

(4) A color claim as set out in § 7.12, if appropriate;

(5) A description of the mark that is identical to the description of the mark in the basic application or registration, as appropriate;

(6) An indication of the type of mark if the mark in the basic application and/or registration is a three-dimensional mark, a sound mark, a collective mark or a certification mark;

(7) A list of the goods and/or services that is identical to or narrower than the list of goods and/or services in each claimed basic application or registration and classified according to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks;

(8) A list of the Contracting Parties designated for an extension of protection. If the goods and/or services in the international application are not the same for all Contracting Parties, the application must include a list of the goods and/or services in the international application that pertain to each designated Contracting Party;

(9) The certification fee required by § 7.6, and the international application fees for all classes and designated Contracting Parties identified in the international application (see § 7.7);

(10) A statement that the applicant is entitled to file an international application in the Office, specifying that applicant: is a national of the United States; has a domicile in the United States; or has a real and effective industrial or commercial establishment in the United States. Where an applicant's address is not in the United States, the applicant must provide the address of its U.S. domicile or establishment; and

(11) An e-mail address for receipt of correspondence from the Office.

(b) For requirements for certification, see § 7.13.

§ 7.12 Claim of color.

(a) If color is claimed as a feature of the mark in the basic application and/or registration, the international applicant must include a statement that color is claimed as a feature of the mark and set forth the same name(s) of the color(s) claimed in the basic application and/or registration. If the basic application and/or registration claim color as a feature of the mark, but the mark is depicted in black and white, the international application must include both a black and white reproduction of the mark and a color reproduction of the mark that meet the requirements of § 2.52 of this chapter.

(b) If color is not claimed as a feature of the mark in the basic application and/or registration, color may not be claimed as a feature of the mark in the international application.

§ 7.13 Certification of international application.

(a) Where an international application contains all the elements set forth in § 7.11(a), the Office will certify to the International Bureau that the information contained in the international application corresponds to the information contained in the basic application(s) and/or basic registration(s) at the time of certification, and will forward the international application to the International Bureau.

(b) Where an international application does not meet the requirements of § 7.11(a), the Office will not certify or forward the international application. If the international applicant paid the international application fees required by § 7.7 through the Office, the Office will refund the international fees. The Office will not refund the certification fee.

§ 7.14 Correcting irregularities in international application.

(a) Upon receipt of a notice of irregularities in an international application from the International Bureau, the applicant must respond to the International Bureau within the period set forth in the notice. Failure to file a timely response to a notice of irregularities may result in the abandonment of the international application by the International Bureau.

(b) Classification and identification of goods and services. Responses to International Bureau notices of irregularities in the classification or identification of goods or services in an international application must be

submitted through the Office for forwarding to the International Bureau. The Office will not review the response or respond to the irregularities on behalf of the international applicant.

(c) Fees. If the International Bureau notifies an international applicant that the fees filed in connection with the international application are insufficient or that irregularities in the classification of goods or services require additional fees, the international applicant must pay the additional fees directly to the International Bureau or through the Office for forwarding to the International Bureau.

(d) An international applicant submitting a response or paying additional fees to the International Bureau through the Office must use TEAS. The International Bureau must receive the response or fees before the end of the response period set forth in the International Bureau notice, even if the response or payment of fees is sent through the Office. To assist the Office in its efforts to timely transmit the response or fees to the International Bureau, the response or fees should be submitted as soon as possible, at least one month before the end of the response period in the International Bureau's notice.

(e) Other Irregularities. Except for irregularities mentioned in paragraphs (b) and (c) of this section, responses to irregularities must be filed directly at the International Bureau.

Subpart C—Subsequent Designation Submitted Through the Office

§ 7.21 Subsequent designation.

(a) A subsequent designation may be filed either directly with the International Bureau or submitted through the Office.

(b) The date of receipt in the Office of a subsequent designation is the date that the subsequent designation is submitted through TEAS and contains all of the following:

(1) The international registration number;

(2) The name and address of the holder of the international registration;

(3) A statement that the holder is entitled to file a subsequent designation in the Office, specifying that holder: is a national of the United States; has a domicile in the United States; or has a real and effective industrial or commercial establishment in the United States. Where a holder's address is not in the United States, the holder must provide the address of its U.S. domicile or establishment;

(4) A list of goods and/or services that is identical to or narrower than the list

of goods and/or services in the international registration;

(5) A list of the Contracting Parties designated for an extension of protection. If the goods and/or services in the subsequent designation are not the same for all the Contracting Parties designated, the holder must include a list of the goods and/or services covered by the subsequent designation that pertain to each designated Contracting Party;

(6) The U.S. transmittal fee required by § 7.6 and the subsequent designation fees required by the International Bureau (§ 7.7); and

(7) An e-mail address for receipt of correspondence from the Office.

(c) If the subsequent designation is accorded a date of receipt, the Office will forward the subsequent designation to the International Bureau.

(d) Correspondence to correct any irregularities in a subsequent designation must be made directly with the International Bureau, even if the subsequent designation is submitted through the Office. If such correspondence is sent to the Office, the Office will not process the correspondence.

Subpart D—Recording Changes to International Registration

§ 7.22 Recording changes to international registration.

(a) All requests to record changes to an international registration must be filed directly with the International Bureau, except for requests to record changes to an international registration under §§ 7.23 and 7.24. If a request to record an assignment or restriction of a holder's right of disposal of an international registration meets the requirements of § 7.23 or 7.24, the Office will forward the request to the International Bureau.

(b) Assignments or restrictions of a holder's rights of disposal of an international registration must be recorded by the International Bureau. Section 10 of the Act and part 3 of this chapter are not applicable to such assignments or restrictions.

(c) When the Office is notified by the International Bureau of an assignment or restriction of a holder's right of disposal of an international registration with an extension of protection to the United States, the Office will take note of the assignment or restriction in its records.

§ 7.23 Request to record assignment submitted through the Office.

(a) In limited circumstances, a request to record an assignment of an

international registration may be submitted through the Office for forwarding to the International Bureau. The following conditions must apply:

(1) The assignee cannot obtain the assignor's signature on the request to record an assignment; and

(2) The assignee is a national of the United States, has a domicile in the United States, or has a real and effective industrial or commercial establishment in the United States.

(b) The assignee must submit a request to record an assignment under paragraph (a) of this section through the Office that includes all of the following:

(1) The international registration number;

(2) The name and address of the holder of the international registration;

(3) The name and address of the assignee of the international registration;

(4) A statement that the assignee: is a national of the United States; has a domicile in the United States; or has a real and effective industrial or commercial establishment in the United States. Where an assignee's address is not in the United States, the assignee must provide the address of its U.S. domicile or establishment;

(5) A list of the designated Contracting Parties with respect to which the international registration has been assigned;

(6) A list of the goods and/or services in the international registration that have been assigned and the designated Contracting Parties to which they pertain;

(7) A description of the interest conveyed; and

(8) The U.S. transmittal fee required by § 7.6 and the fees required by the International Bureau to record the assignment (See § 7.7).

(c) If a request to record an assignment contains all the elements set forth in paragraph (b) of this section, the Office will forward the request to the International Bureau. Forwarding the request to the International Bureau is not a determination by the Office of the validity of the assignment or the effect that the assignment has on the title of the international registration.

(d) If the request fails to contain all of the elements set forth in paragraph (b) of this section, the Office will not forward the request. The Office will notify the assignee(s) of the refusal and the reason(s) for the refusal.

(e) Except for those assignments meeting the conditions set forth in paragraph (a) of this section, requests to record assignments may not be submitted through the Office.

§ 7.24 Request to record security interest or other restriction of holder's rights of disposal submitted through the Office.

(a) In limited circumstances, a request to record a security interest or other restriction of a holder's right to dispose of an international registration may be submitted through the Office for forwarding to the International Bureau. The following conditions must apply:

(1) The restriction is the result of an agreement between the holder of the international registration and the party restricting the holder's right of disposal and is not the result of a court order; and

(2) The signature of the holder of the international registration cannot be obtained for the request to record the restriction.

(b) The party who obtained a restriction of the holder's right of disposal must submit a request to record the restriction under paragraph (a) of this section through the Office that includes all the following:

(1) The international registration number;

(2) The name and address of the holder of the international registration;

(3) The name and address of the party who holds the restriction;

(4) A statement that the party who submitted the request: is a national of the United States; has a domicile in the United States; or has a real and effective industrial or commercial establishment in the United States. Where a party's address is not in the United States, the party must provide the address of its U.S. domicile or establishment;

(5) A summary of the main facts concerning the restriction; and

(6) A list of the Contracting Parties designated in the international registration to which the restriction applies.

(c) If a request to record a restriction contains all of the elements set forth in paragraph (b) of this section, the Office will forward the request to the International Bureau. Forwarding the request to the International Bureau is not a determination by the Office of the validity of the restriction or the effect that the restriction has on the holder's right to dispose of the international registration.

(d) If the request fails to contain all of the elements set forth in paragraph (b) of this section, the Office will not forward the request. The Office will notify the party who submitted the request of the refusal and the reason(s) for the refusal.

(e) Except for restrictions meeting the conditions set forth in paragraph (a) of this section, restrictions on a holder's right to dispose of an international

registration may not be submitted through the Office.

Subpart E—Extension of Protection to the United States

§ 7.25 Applicability of part 2 to extension of protection.

(a) Except for §§ 2.130, 2.131, 2.160 through 2.166, 2.168, and 2.181 through 2.186, all sections in part 2 of this chapter apply to a request for extension of protection of an international registration to the United States, including sections related to proceedings before the Trademark Trial and Appeal Board, unless stated otherwise.

(b) For purposes of examination, a request for an extension of protection to the United States is referred to as an application under section 66(a) of the Act, and references to applications and registrations in part 2 of this chapter include extensions of protection to the United States.

(c) Upon registration, an extension of protection to the United States is referred to as a registration or a registered extension of protection.

§ 7.26 Filing date of extension of protection for purposes of examination in the Office.

(a) If a request for extension of protection of an international registration to the United States is made in an international application and the request includes a declaration of a bona fide intention to use the mark in commerce, the filing date of the extension of protection to the United States is the international registration date.

(b) If a request for extension of protection of an international registration to the United States is made in a subsequent designation and the request includes a declaration of a bona fide intention to use the mark in commerce, the filing date of the extension of protection to the United States is the International Bureau date of recording of the subsequent designation.

§ 7.27 Priority claim of extension of protection for purposes of examination in the Office.

An extension of protection of an international registration to the United States is entitled to a claim of priority under section 67 of the Act if:

(a) The request for extension of protection contains a claim of priority;

(b) The request for extension of protection specifies the filing date, serial number and the country of the application that form the basis for the claim of priority; and

(c) The date of the international registration or the date of recording of the subsequent designation at the International Bureau of the request for extension of protection to the United States is not later than six months after the filing date of the application that forms the basis for the claim of priority.

§ 7.28 Replacement of U.S. registration by registered extension of protection.

(a) A registered extension of protection shall have the same rights accrued to a previously issued U.S. registration if:

(1) Both registrations are owned by the same person and identify the same mark; and

(2) All of the goods and/or services listed in the U.S. registration are also listed in the registered extension of protection.

(b) The holder of an international registration with an extension of protection to the United States may file a request to note replacement of the U.S. registration with the extension of protection. If the request contains all of the following, the Office will take note of the replacement in its automated records:

(1) The serial number or registration number of the extension of protection;

(2) The registration number of the replaced U.S. registration; and

(3) The fee required by § 7.6.

(c) If the request to note replacement is denied, the Office will notify the holder of the reason(s) for refusal.

§ 7.29 Effect of replacement on U.S. registration.

A U.S. registration that has been replaced by a registered extension of protection under section 74 of the Act and § 7.28 will remain in force, unless cancelled, expired or surrendered, as long as:

(a) The owner of the replaced U.S. registration continues to file affidavits or declarations of use in commerce or excusable nonuse under section 8 of the Act; and

(b) The replaced U.S. registration is renewed under section 9 of the Act.

§ 7.30 Effect of cancellation or expiration of international registration.

When the International Bureau notifies the Office of the cancellation or expiration of an international registration, in whole or in part, the Office shall cancel, in whole or in part, the corresponding pending or registered extension of protection to the United States. The date of cancellation of an extension of protection or relevant part shall be the date of cancellation or expiration of the corresponding

international registration or relevant part.

§ 7.31 Requirements for transformation of an extension of protection to the United States into a U.S. application.

(a) If the International Bureau cancels an international registration in whole or in part, under Article 6(4) of the Madrid Protocol, the holder of that international registration may file a request to transform the corresponding pending or registered extension of protection to the United States into an application under section 1 or 44 of the Act.

(b) The holder of the international registration must file a request for transformation through TEAS within three months of the date of cancellation of the international registration and include:

(1) The serial number or registration number of the extension of protection to the United States;

(2) The name and address of the holder of the international registration;

(3) The application filing fee for at least one class of goods or services required by § 2.6 of this chapter; and

(4) An e-mail address for receipt of correspondence from the Office.

(c) If the request for transformation contains all of the elements set forth in paragraph (b) of this section, the extension of protection shall be transformed into an application under section 1 or 44 of the Act and accorded the same filing date and the same priority that was accorded to the extension of protection.

(d) The application under section 1 or 44 of the Act that results from a transformed extension of protection will be examined under part 2 of this chapter.

(e) A request for transformation that fails to contain all of the elements set forth in paragraph (b) of this section will not be processed.

Subpart F—Affidavit Under Section 71 of the Act for Extension of Protection to the United States

§ 7.36 Affidavit or declaration of use in commerce or excusable nonuse required to avoid cancellation of an extension of protection to the United States.

(a) Subject to the provisions of section 71 of the Act, a registered extension of protection shall remain in force for the term of the international registration upon which it is based unless the international registration expires or is cancelled by the International Bureau.

(b) During the following time periods, the holder of an international registration must file an affidavit or declaration of use or excusable nonuse,

or the registered extension of protection will be cancelled:

(1) On or after the fifth anniversary and no later than the sixth anniversary after the date of registration; and

(2) Within the six-month period preceding the end of each ten-year period after the date of registration, or the three-month grace period immediately following, with payment of the grace period surcharge required by section 71(a)(2)(B) of the Act and § 7.6.

§ 7.37 Requirements for a complete affidavit or declaration of use in commerce or excusable nonuse.

A complete affidavit or declaration under section 71 of the Act must:

(a) Be filed by the holder of the international registration within the period set forth in § 7.36(a);

(b) Include a statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 of this chapter by a person properly authorized to sign on behalf of the holder, attesting to the use in commerce or excusable nonuse of the mark within the period set forth in section 71 of the Act. The verified statement must be executed on or after the beginning of the filing period specified in § 7.36(a). A person who is properly authorized to sign on behalf of the holder is:

(1) A person with legal authority to bind the holder; or

(2) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the holder; or

(3) An attorney as defined in § 10.1(c) of this chapter who has an actual written or verbal power of attorney or an implied power of attorney from the holder.

(c) Include the U.S. registration number;

(d)(1) Include the fee required by § 7.6 for each class of goods or services that the affidavit or declaration covers;

(2) If the affidavit or declaration is filed during the grace period under section 71(a)(2)(B) of the Act, include the grace period surcharge per class required by § 7.6;

(3) If at least one fee is submitted for a multi-class registration, but the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. If the required fee(s) are not submitted within the time period set out in the Office action and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending

order, beginning with the lowest numbered class;

(e)(1) Specify the goods or services for which the mark is in use in commerce, and/or the goods or services for which excusable nonuse is claimed under § 7.37(f)(2);

(2) Specify the goods or services being deleted from the registration, if the affidavit or declaration covers less than all the goods or services or less than all the classes in the registration;

(f)(1) State that the registered mark is in use in commerce on or in connection with the goods or services in the registration; or

(2) If the registered mark is not in use in commerce on or in connection with all the goods or services in the registration, set forth the date when use of the mark in commerce stopped and the approximate date when use is expected to resume and recite facts to show that nonuse as to those goods or services is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark; and

(g) Include a specimen showing current use of the mark for each class of goods or services, unless excusable nonuse is claimed under § 7.37(f)(2). The specimen must meet the requirements of § 2.56 of this chapter.

§ 7.38 Notice to holder of extension of protection.

The registration certificate for an extension of protection to the United States includes a notice of the requirement for filing the affidavit or declaration of use or excusable nonuse under section 71 of the Act. However, the affidavit or declaration must be filed within the time period required by section 71 of the Act regardless of whether this notice is received.

§ 7.39 Acknowledgment of receipt of affidavit or declaration of use in commerce or excusable nonuse.

(a) The Office will issue a notice that states whether an affidavit or declaration of use in commerce or excusable nonuse is acceptable, and if the affidavit or declaration is refused as unacceptable, the reasons for refusal.

(b) A response to the refusal must be filed within six months of the mailing date of the Office action, or before the end of the filing period set forth in section 71(a) of the Act, whichever is later. The Office will cancel the extension of protection if no response is filed within this time period.

§ 7.40 Petition to Director to review refusal.

(a) A response to the examiner's initial refusal to accept an affidavit or

declaration is required before filing a petition to the Director, unless the examiner directs otherwise. See § 7.39(b) for the deadline for responding to an examiner's Office action.

(b) If the examiner maintains the refusal of the affidavit or declaration, the holder may file a petition to the Director to review the examiner's action. The petition must be filed within six months of the mailing date of the action maintaining the refusal, or the Office will cancel the registration.

(c) A decision by the Director is necessary before filing an appeal or commencing a civil action in any court.

Subpart G—Renewal of International Registration and Extension of Protection

§ 7.41 Renewal of international registration and extension of protection.

(a) Any request to renew an international registration and its extension of protection to the United States must be made at the International Bureau in accordance with Article 7 of the Madrid Protocol.

(b) A request to renew an international registration or extension of protection to the United States submitted through the Office will not be processed.

Dated: March 21, 2003.

Jon W. Dudas,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 03-7392 Filed 3-27-03; 8:45 am]

BILLING CODE 3510-16-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA202-4400b; FRL-7474-3]

Approval and Promulgation of Air Quality Implementation Plans; Philadelphia County, PA; Construction, Modification and Operation Permit Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Philadelphia County portion of the Pennsylvania State Implementation Plan (SIP). The revision approves Philadelphia County's regulations governing the construction of new and modified sources and the operation of existing sources of air pollution in the

County. EPA is approving this SIP revision in accordance with the requirements of the Clean Air Act. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by April 28, 2003.

ADDRESSES: Written comments should be addressed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, Pennsylvania 19104.

FOR FURTHER INFORMATION CONTACT: Paul Arnold, (215) 814-2194, or by e-mail at arnold.paul@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: March 20, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03-7511 Filed 3-27-03; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

[CMS-6012-N5]

RIN 0938-AM40

Medicare Program; Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics; Meeting Announcement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meetings.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces additional public meetings of the Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics. The Committee was mandated by section 427 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA).

DATES: The next two negotiated rulemaking committee meetings will be held May 19 and 20, 2003 and June 2 and 3, 2003. On May 19 and June 2, the negotiated rulemaking committee will meet from 9 a.m. to 5 p.m. On May 20 and June 3, the negotiated rulemaking committee will meet from 8 a.m. to 4 p.m.

These meetings are open to the public, and subsequent meetings will be announced in the **Federal Register**.

ADDRESSES: The Committee meetings will be held at the Hilton Pikesville at 1726 Reisterstown Road, Baltimore, MD 21208 (Telephone 410-653-1100). Any subsequent meetings will be held at locations to be announced.

FOR FURTHER INFORMATION CONTACT: Theresa Linkowich, (410) 786-9249 (General inquiries concerning prosthetics and custom-fabricated orthotics), Centers for Medicare & Medicaid Services (CMS), 7500 Security Blvd, Baltimore MD 21244; or Lynn Sylvester, 202-606-9140, Federal Mediation and Conciliation Services, 2100 K Street, NW., Washington, DC 20427; or Ira Lobel, 518-431-0130, Federal Mediation and Conciliation Services, 1 Clinton Square, Room 952, Albany, NY 12207.

SUPPLEMENTARY INFORMATION: We published a notice in the **Federal**

Register on July 26, 2002 (FR pages 48839-48840) announcing the establishment of the negotiated rulemaking committee to advise us on developing a proposed rule that would establish special payment provisions and requirements for suppliers of prosthetics and certain custom-fabricated orthotics under the Medicare program. The notice also announced dates for the Committee's first two meetings that were held on October 1-3, 2002 and October 29-31, 2002. On November 22, 2002 (FR page 70358), a notice of meetings was published in the **Federal Register** announcing the third meeting that was held January 6 and 7, 2003, and the fourth meeting that was held February 10 and 11, 2003. On January 24, 2003, (FR Page 3482) a notice of meetings was published in the **Federal Register** announcing the fifth meeting that was held March 10 and 11, 2003 and the sixth meeting held April 7 and 8, 2003.

Through face-to-face negotiations, these meetings will help the Committee to reach consensus on the substance of the proposed rule. If consensus is reached, the Committee will transmit to us a report containing required information for developing a proposed rule and we will use the report as the basis for the proposed rule. The Committee is responsible for identifying the key issues, gauging their importance, analyzing the information necessary to resolve the issues, arriving at a consensus, and recommending the text and content of the proposed regulation. Detailed information is available on the CMS Internet Home Page: <http://cms.hhs.gov/faca/prosthetic/> or by calling the Federal Advisory Committee Hotline at (410) 786-9379.

The Agendas for the May 19 and 20 meeting and the June 2 and 3 will cover the following:

1. Review of the April 7 and 8 minutes (May 19 and 20) and review of the May 19 and 20 minutes (June 2 and 3).
2. Continuing discussion of statutory terms to be further defined by regulation.
3. Continuing discussion on L codes.
4. Continuing discussion on qualifications as defined in the statute.
5. Presentation by Physical Therapists and Occupational Therapists on delivery of care.
6. Public comments.

Public Participation

All interested parties are invited to attend these public meetings, but attendance is limited to the space available. No advance registration is

required. Seating will be available on a first-come first-served basis. Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Theresa Linkowich, mlinkowich@cms.hhs.gov or call (410) 786-9249 at least 10 days before the meeting. The Committee has the authority to decide to what extent oral presentations by members of the public may be permitted at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the Committee members or other participants unless the facilitators have specifically approved these questions. The number of oral presentations may be limited by the time available.

Interested parties can file statements with the Committee. Mail written statements to the following address: Federal Mediation and Conciliation Services, 2100 K Street, NW., Washington, DC 20427, Attention: Lynn Sylvester, or call Lynn Sylvester at (202) 606-9140.

Additional Meetings

Meetings will be held as necessary. We will publish notices of future meetings in the **Federal Register**. All future meetings will be open to the public without advance registration.

Authority: Federal Advisory Committee Act (5 U.S.C. App. 2)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 21, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03-7494 Filed 3-27-03; 8:45 am]

BILLING CODE 4120-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-624, MB Docket No. 03-55, RM-10653]

Radio Broadcasting Services; Estelline, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 263C3 at Estelline, Texas, as that community's first local service. Channel 263C3 can be allotted

to Estelline consistent with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 13.7 kilometers (8.5 miles) southwest of the community. The reference coordinates for Channel 263C3 at Estelline are 34-28-41 North Latitude and 100-33-42 West Longitude.

DATES: Comments must be filed on or before May 5, 2003, and reply comments on or before May 20, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03-55, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Estelline, Channel 263C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03-7465 Filed 3-27-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-776; MB Docket No. 03-69, RM-10664; MB Docket No. 03-70, RM-10670; MB Docket No. 03-71, RM-10665]

Radio Broadcasting Services; Carrizozo, NM; Knoxville, IL; and Nantucket, MA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes three allotments in Carrizozo, New Mexico, Knoxville, Illinois, and Nantucket, Massachusetts. The Commission requests comment on a petition filed by Douglas Bennett proposing the allotment of Channel 261C2 at Carrizozo, New Mexico, as the community's first local service. Channel 261C2 can be allotted to Carrizozo in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.9 km (13 miles) southeast of Carrizozo. The coordinates for Channel 261C2 at Carrizozo are 33-28-30 North Latitude and 105-46-18 West Longitude. The proposed allotment will require concurrence by Mexico because it is located within 320 kilometers (199 miles) of the Mexican border. See Supplementary Information *infra*.

DATES: Comments must be filed on or before May 5, 2003, and reply comments on or before May 20, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Douglas Bennett, 13238 Regency Forest, San Antonio, Texas 78249; and Paul B. Christensen, Law Offices of Paul B. Christensen, P.A.,

3749 Southern Hills Drive, Jacksonville, Florida 32225.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418-7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 03-69, 03-70, and 03-71; adopted March 12, 2003 and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893.

The Commission further requests comment on a petition filed by Paul B. Christensen proposing the allotment of Channel 291A at Knoxville, Illinois, as the community's second local FM service. Channel 291A can be allotted to Knoxville in compliance with the Commission's minimum distance separation requirements without site restriction at center city reference coordinates. The coordinates for Channel 291A at Knoxville are 40-54-23 North Latitude and 90-17-08 West Longitude.

The Commission further requests comment on a petition filed by Paul B. Christensen proposing the allotment of Channel 249A at Nantucket, Massachusetts, as the community's second local FM service. Channel 249A can be allotted to Nantucket in compliance with the Commission's minimum distance separation requirements without site restriction at center city reference coordinates. The coordinates for Channel 249A at Nantucket are 41-16-54 North Latitude and 70-06-06 West Longitude.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Channel 291A at Knoxville.

3. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by adding Channel 249A at Nantucket.

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Carrizozo, Channel 261C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03-7466 Filed 3-27-03; 8:45 am]

BILLING CODE 6712-12-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-777; MB Docket No. 03-68; RM-10654, RM-10656]

Radio Broadcasting Services; Fort Stockton and Sanderson, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two mutually exclusive Petitions for Rule Making. The first proposal, filed by Linda Crawford, requests the allotment of Channel 263C at Fort Stockton, Texas, as that community's second FM commercial service. The second proposal, filed by Katherine Pyeatt, seeks the allotment of Channel 261C3 at Sanderson, Texas, as that community's first FM commercial service. Channel 263C can be allotted to Fort Stockton, Texas, in conformity with the Commission's Rules, provided there is a site restriction of 13.8 kilometers (8.6 miles) southeast of the community. The reference coordinates for Channel 263C at Fort Stockton are 30-50-06 North Latitude and 102-45-06 West Longitude. Alternatively, Channel 261C3 can be allotted to Sanderson, consistent with the minimum distance separation requirements of Section

73.207(b) of the Commission's Rules, provided there is a site restriction of 12.3 kilometers (7.6 miles) north of the community. The reference coordinates for Channel 261C3 at Sanderson are 30-15-08 North Latitude and 102-22-53 West Longitude.

DATES: Comments must be filed on or before May 5, 2003, and reply comments on or before May 20, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Linda Crawford, 3500 Maple Avenue #1320, Dallas, Texas 75219 and Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03-68, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.
For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 263C at Fort Stockton and by adding Sanderson, Channel 261C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03-7468 Filed 3-27-03; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-625; MB Docket No. 03-56, RM-10662]

Radio Broadcasting Services; George West and Victoria, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Victoria RadioWorks, Ltd. proposing the substitution of Channel 265C3 for Channel 265A at Victoria, Texas, and the modification of Station KEFG(FM)'s license accordingly. To accommodate the upgrade, petitioner also proposes the deletion of vacant Channel 265A at George West, Texas. Channel 265C3 can be allotted to Victoria in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.1 kilometers (4.4 miles) southwest at petitioner's presently licensed site. Since Victoria is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested. The coordinates for Channel 265C3 at Victoria are 28-46-40 North Latitude and 97-04-10 West Longitude.

DATES: Comments must be filed on or before May 5, 2003, and reply comments on or before May 20, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20054. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harry C. Martin, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03-56, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended and by removing Channel 265A at George West; by removing Channel 265A and adding Channel 265C3 at Victoria.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03-7469 Filed 3-27-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-766; MB Docket No. 03-64; RM-10672]

Radio Broadcasting Services; Lamont and McFarland, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by Dana J. Puopolo proposing the allotment of Channel 247A to Lamont, California, as that community's first local service. In order to accommodate this allotment, the Petitioner also proposes the substitution of Channel 282A for vacant Channel 247A at McFarland, California. Channel 247A can be allotted to Lamont, California, consistent with the minimum distance separation requirement of the Commission's Rules, provided there is a site restriction of 6.5 kilometers (4.1 miles) southeast of the community. The reference coordinates for Channel 247A at Lamont are 35-12-23 North Latitude and 118-52-51 West Longitude. Channel 282A can also be allotted to McFarland, California, in conformity with Commission's Rules, provided there is a site restriction 10.3 kilometers (6.4 miles) west of the community. The reference coordinates for Channel 282A at McFarland are 35-40-16 North Latitude and 119-20-30 West Longitude.

DATES: Comments must be filed on or before May 5, 2003, and reply comments on or before May 20, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Dana J. Puopolo, 2134 Oak Street, Unit C, Santa Monica, CA 90405.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03-64, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from

the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Lamont, Channel 247A and by removing Channel 247A and by adding Channel 282A at McFarland.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03-7467 Filed 3-27-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-778; MB Docket No. 03-72, RM-10674; MB Docket No. 03-73, RM-10675; MB Docket No. 03-74, RM-10676; MB Docket No. 03-75, RM-10677]

Radio Broadcasting Services; Eden, TX; Leedey, OK; Memphis, TX; and Silverton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes four allotments in Eden, Texas, Leedey, Oklahoma, Memphis, Texas, and Silverton, Texas. The Commission requests comment on a petition filed by Maurice Salsa proposing the allotment of Channel 252A at Silverton, Texas, as the community's first local service. Channel 252A can be allotted to Silverton in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.2 km (5.1 miles) east of Silverton. The coordinates for Channel 252A at Silverton are 34-28-15 North Latitude and 101-13-09 West Longitude. See **SUPPLEMENTARY INFORMATION** *infra*.

DATES: Comments must be filed on or before May 5, 2003, and reply comments on or before May 20, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Maurice Salsa, 5616 Evergreen Valley Drive, Kingwood, Texas 77345; Robert Fabian, 4 Hickory Crossing Lane, Argyle, Texas 76226; and Linda Crawford, 3500 Maple Avenue, #132, Dallas, Texas 75219.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418-7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MB Docket Nos. 03-72, 03-73, 03-74, and 03-75; adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893.

The Commission further requests comment on a petition filed by Robert Fabian proposing the allotment of Channel 297A at Leedey, Oklahoma, as the community's first local service. Channel 297A can be allotted to Leedey in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.4 km (5.8 miles) northwest of Leedey. The coordinates for Channel 297A at Leedey are 35-56-36 North Latitude and 99-23-48 West Longitude.

The Commission further requests comment on a petition filed by Linda Crawford proposing the allotment of Channel 294A at Eden, Texas, as the

community's second local FM service. Channel 294A can be allotted to Eden in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.4 km (7.1 miles) southwest of Eden. The coordinates for Channel 294A at Eden are 31-10-00 North Latitude and 99-57-01 West Longitude. Concurrence in this allotment has been received from the Mexican government.

The Commission further requests comment on a petition filed by Maurice Salsa proposing the allotment of Channel 283A at Memphis, Texas, as the community's third local FM service. Channel 283A can be allotted to Memphis in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.7 km (5.4 miles) southeast of Memphis. The coordinates for Channel 283A at Memphis are 34-41-14 North Latitude and 100-27-03 West Longitude.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Leedey, Channel 297A.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 294A at Eden, Channel 283A at Memphis, and Silverton, Channel 252A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03-7471 Filed 3-27-03; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030320066-3066-01; I.D. 022103D]

RIN 0648-AQ78

Fisheries of the Exclusive Economic Zone Off Alaska; Delay of Full Retention and Utilization Requirements for Rock Sole and Yellowfin Sole

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 75 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This amendment would delay the effective date of requirements for 100-percent retention and utilization requirements of rock sole and yellowfin sole from January 1, 2003, until June 1, 2004. The North Pacific Fishery Management Council (Council) submitted Amendment 75 to provide the Council and the affected industry with additional time to develop and assess alternatives to address groundfish discards in the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI). This action is designed to be consistent with the the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

DATES: Comments on the proposed rule must be received on or before May 12, 2003.

ADDRESSES: Comments may be sent to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Durall, or delivered to NMFS, Alaska Region, 709 West 9th Street, Room 453, Juneau, AK, 99801-1668, and marked Attn: Lori Durall. Comments also may be sent via facsimile (fax) to (907) 586-7557.

Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendment 75 may be obtained from NMFS at the above address or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at (907) 586-7228.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907-586-7228 or kent.lind@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the exclusive economic zone of the BSAI under the FMP. The Council prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council has submitted Amendment 75 for Secretarial review and a Notice of Availability of the FMP amendment was published in the **Federal Register** on February 28, 2003, with comments on the FMP amendment invited through April 29, 2003. Comments may address the FMP amendment, the proposed rule, or both, but must be received by April 29, 2003, to be considered in the approval/disapproval decision on the FMP amendment. All comments received by April 29, 2003, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision on the FMP amendment.

Purpose and Need for Amendment 75

In 1997, the Council adopted a regulatory program to reduce the amount of groundfish discards in the groundfish fisheries off Alaska. This program, known as the Improved Retention/Improved Utilization (IR/IU) Program, was adopted as Amendment 49 to the FMP for the Groundfish Fishery of the BSAI and Amendment 49 to the FMP for Groundfish of the Gulf of Alaska (GOA) (Amendments 49/49). The IR/IU program requires that vessels fishing for groundfish in Alaska retain all pollock and Pacific cod beginning in 1998 when directed fishing for those species is open. On January 1, 2003, the program expanded to include all rock sole and yellowfin sole in the BSAI, and all shallow water flatfish in the GOA.

These requirements were set out in the final rule to implement Amendment 49 for the BSAI (62 FR 63880, December 3, 1997), and the final rule to implement

Amendment 49 for the GOA (62 FR 65379, December 12, 1997).

In the EA/RIR/IRFA prepared for BSAI Amendment 49, NMFS assessed the biological, economic and social impacts of improved retention and utilization. This analysis found that the proposed actions could result in significant economic impact on a substantial number of small entities, including a significant number of relatively small catcher/processor vessels that use trawl gear. Because of their size, these vessels are limited to freezing headed and gutted products.

To mitigate some of the effects that IR/IU regulations could have, the Council delayed implementation of the rules on the most negatively affected fisheries (i.e., those groundfish fisheries in which rock sole, yellowfin sole and shallow-water flatfish are caught and discarded) for a period of 5 years.

The Council recognized the need to conduct an assessment of the impacts of IR/IU regulations on small entities to determine whether a modification of the IR/IU regulations would minimize such impacts and continue to meet the Council's objectives. These objectives include ensuring healthy fisheries, reducing bycatch and waste, and improving utilization of fish resources with minimum negative effects of regulations on small entities.

To this end, the Council began an analysis in early 2002, to examine alternative approaches to current 100-percent retention requirements for rock sole and yellowfin sole that could achieve the Council's objectives of reducing bycatch but that would have less negative effects on industry. The analysis concluded that some entities currently participating in the groundfish fisheries of the BSAI might discontinue their participation due to the economic burden the existing rules could place on their operation.

In June 2002, therefore, the Council revised its IR/IU problem statement to state that 100-percent retention of rock sole and yellowfin sole would result in severe economic losses to certain participants in the fishery, while less than 100-percent retention of only those species would not be enforceable. The Council also began an analysis of a variety of alternative regulatory approaches that would provide for reductions in groundfish discards in a less burdensome manner.

In October 2002, the Council concluded that while several alternative proposals under analysis showed merit, they were not sufficiently developed and analyzed in a manner that would allow for implementation on January 1, 2003. Therefore, the Council adopted

BSAI Amendment 75 to delay implementing the 100-percent retention requirements for rock sole and yellowfin sole in the BSAI until June 1, 2004, to provide the Council and industry with additional time to develop alternative regulatory proposals. Also in October 2002, the Council considered whether to delay 100-percent retention requirements for shallow water flatfish in the GOA groundfish fisheries. The Council concluded, however, that full retention of shallow water flatfish in the GOA is practicable and would not result in the same economic burden as would the same requirement for rock sole and yellowfin sole in the BSAI groundfish fisheries. Therefore, the Council decided not to delay 100-percent retention requirements for shallow water flatfish in the GOA.

Elements of the Proposed Rule

This proposed rule would delay the effective date for IR/IU retention and utilization requirements for rock sole and yellowfin sole in the BSAI until June 1, 2004. No other regulatory actions are contained in this proposed rule.

Classification

At this time, NMFS has not determined that the FMP amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA that describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUPPLEMENTARY INFORMATION** section of the preamble. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. There are no new reporting or recordkeeping requirements contained

in any of the alternatives considered for this action.

There are 176 small entities (all catcher vessels) and 34 large entities (6 catcher vessels, 24 head and gut catcher processors, and 4 surimi catcher processors) active in these fisheries. Since per vessel costs are not available for these vessels, individual vessel profitability could not be estimated. Therefore, changes in gross revenue of the 176 vessels are used as a proxy for changes in individual vessel profitability. Furthermore, assumptions are made that revenues losses and gains are shared equally among these vessels and discards represent a displacement of revenue tonnage if hold space is limited. There are no economic impacts resulting from disproportionate sizes of vessels in the fishery.

A copy of the complete analysis can be obtained from the NMFS (see **ADDRESSES**) or via the Internet at <http://www.fakr.noaa.gov/>.

A summary of the analysis follows:

The preferred alternative would delay implementation of IR/IU flatfish regulations in the BSAI fisheries until June 2004. The economic impact of the preferred alternative on individual vessels is expected to be minimal.

Alternative 1, which represents a 100-percent retention requirement, would lead to decreases in gross revenue for the affected fisheries and could yield substantial decreases in gross revenue associated with rock sole in the Pacific cod fishery. Alternative 2 would allow some discards of the IR/IU flatfish species. The percent retention requirement would be set independently for each species and would range from 50-percent to 90-percent. The analysis of the effects of alternative retention requirements on catcher vessels shows that virtually 100-percent of the catch of rock sole and yellow sole is discarded in all the fisheries in which rock sole and yellow sole are caught. Consequently, any retention requirement for rock sole or yellow sole would be expected to result in adverse economic and operational impacts. A full retention requirement for rock sole would have the greatest effect, and this requirement would

result in less than a five percent displacement in revenue tonnage for all catcher vessel classes.

Alternative 3 would delay implementation of IR/IU flatfish rules for up to 3 years. Delaying implementation will postpone the severe economic consequences discussed under Alternatives 1 and 2. Alternative 4 exempts fisheries from IR/IU flatfish regulations if flatfish discards are less than 5 percent of total groundfish catch. Discards exceed 5 percent in most flatfish fisheries and in Pacific cod trawl fisheries in the BSAI. The revenue reductions of this alternative are similar to those of Alternative 1. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: March 24, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57.

2. In § 679.27, paragraphs (b)(3) and (b)(4) are revised to read as follows:

§ 679.27 Improved Retention/Improved Utilization Program.

* * * * *

(b) * * *

(3) Rock sole in the BSAI (beginning June 1, 2004).

(4) Yellowfin sole in the BSAI (beginning June 1, 2004).

* * * * *

[FR Doc. 03-7516 Filed 3-27-03; 8:45 am]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 68, No. 60

Friday, March 28, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02-088-2]

RIN 0579-AB47

Agency Information Collection Activities; OMB Approval Received

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Office of Management and Budget's approval of a collection of information contained in the Animal and Plant Health Inspection Service interim rule establishing the regulations pertaining to possession, use, and transfer of biological agents and toxins.

FOR FURTHER INFORMATION CONTACT: Mrs. Celeste Sickles, APHI Information Collection Coordinator, MRPBS, APHIS, 4700 River Road Unit 123, Riverdale, MD 20737-1238; (301) 734-7477.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 2002, we published in the **Federal Register** (67 FR 76908-76938, Docket No. 02-088-1) an interim rule that established the regulations at 7 CFR part 331 and 9 CFR part 121, "Possession, Use, and Transfer of Biological Agents and Toxins." That rule contains information collection requirements. The Office of Management and Budget (OMB) approved the collection of information requirements with respect to that interim rule under OMB control number 0579-0213 (expires August 31, 2003).

Done in Washington, DC, this 21st day of March, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03-7493 Filed 3-27-03; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Supplemental Form for Collecting Taxpayer Identifying Numbers

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the Agency's proposed information collection of taxpayer identifying numbers.

DATES: Written comments must be submitted on or before May 27, 2003.

ADDRESSES: Comments may be mailed to Mark Porter, Grants Management Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methods and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to Mark Porter, Grants Management Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Mark Porter at (703) 305-2847.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Form for Collecting Taxpayer Identifying Numbers, FNS-711.

OMB Number: 0584-0501.

Expiration Date: May 31, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: Section 3100(y) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134), codified at 31 U.S.C. 3325(d), requires Federal agencies to include the taxpayer identifying number (TIN) of all persons or organizations they pay whenever a request for payment is submitted to Federal payment officials. Departmental Regulation 2100-2 requires all individuals and entities doing business with USDA to furnish a TIN. The purpose of the Supplemental Form for Collecting Taxpayer Identifying Numbers is to comply with Federal law by enabling the Agency to legally obtain a TIN from all persons and organizations who are entered into a direct payment relationship with FNS.

Affected Public: Individuals and entities who enter into a direct payment agreement with FNS under any of the various nutrition and nutrition education programs administered by FNS.

Estimated Number of Respondents: 800.

Number of Responses per respondent: 1.

Estimated Total annual responses: 800.

Hours per response: 0.0833.

Total Annual Reporting hours: 66.6.

Number of record keepers: 8.

Estimated annual hours per record keeper: 1.0.

Total annual record keeping hours: 8.

Total annual burden hours: 74.6

(annual reporting hours plus annual record keeping hours).

Dated: March 19, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03-7414 Filed 3-27-03; 8:45 am]

BILLING CODE 3410-30-U

DEPARTMENT OF AGRICULTURE**Forest Service****McNally Fire Roadless Restoration Project**

AGENCY: USDA Forest Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service is preparing an environmental impact statement (EIS) to address the impacts of the McNally Fire within the Rincon, Chico, and Cannell Roadless areas. In July and August of 2002, the Sequoia National Forest experienced the largest wildfire in its history. The Sequoia National Forest proposes to begin long-germ ecological restoration on that portion of the fire damaged areas on the Cannell Meadow and Hot Springs Ranger Districts that are inside the inventoried roadless areas with the exclusion of those areas that lie within the Giant Sequoia National Monument. The McNally Fire Roadless Restoration Project would implement restoration measures on those watersheds that burned with a moderate to high intensity leading to heavy tree mortality and/or other adverse effects to forest resources such as soils, riparian areas, and wildlife habitat. The fire also killed hundreds of thousands of trees that if left untreated will contribute to high fuel loading over time and re-create high risks for another catastrophic fire. The goal of the project is to move the burned areas toward the desired conditions described in the Sequoia National Forest Land and Resource Management Plan (Forest Plan) as amended by the Sierra Nevada Forest Plan Amendment (SNFPA).

DATES: The public is asked to submit any issues (points of concern, debate, dispute, or disagreement) regarding potential effects of the proposed action by April 25, 2003. The draft EIS is expected to be available for public comment in August 2003 and the final EIS is expected to be published in November 2003.

ADDRESSES: Send written comments to: McNally Fire Roadless Restoration Project, USDA Forest Service, Sequoia National Forest, 900 W. Grant Avenue, Porterville, CA 93257.

FOR FURTHER INFORMATION CONTACT: Tom Simonson, Ecosystem Manager, Sequoia National Forest, at the address listed above. The phone number is (559) 784-1500.

SUPPLEMENTARY INFORMATION:**Purpose and Need for Action**

In light of desired conditions specified in the Forest Plan and the existing conditions within the project area outlined above, there is an immediate need to:

1. Accelerate the re-establishment of burned conifer stands to provide important habitat for such old forest species as the spotted owl, fisher, marten, and goshawk.
2. Restore ground cover to soils left unprotected by the fire in order to minimize erosion in the short term and to replace organic material over the long term.
3. Reduce existing fuels in order to reduce the risk of another stand-replacing fire, which would damage recovering habitats and riparian condition, thereby setting back the clock on development of old forest habitat and riparian restoration.

Proposed Action

This project proposes to restore approximately 17,700 acres of conifer habitat and 12,130 acres of Riparian Conservation Areas (RCAs), of which 5,894 acres are within conifer habitat, with a combination of treatment and non-treatment methods. No roads would be constructed within the inventoried roadless areas. All the areas proposed for treatment are to be managed following the land management direction in the Forest Plan as amended.

Treatments that would be applied in a specific area depend upon the specific restoration need, the slope of the terrain, the degree of vegetation mortality, and the land management allocation. Where possible, dead trees that have commercial value and that are not needed to meet resource objectives would be removed from the site primarily by helicopter through a commercial timber sale. Restoration may require the removal of fire-killed trees to facilitate the future management of those stands. Standing dead trees may present safety hazards and physical barriers to the restoration activities and to future uses. Removal may also be needed to reduce future fuels accumulation to help mitigate future uncharacteristic wildfire effects. Other fuel treatments besides removal will include prescribed burning in combination with removal and/or the dropping and leaving of dead trees.

Felling of dead trees across the contour of the slope is proposed to stabilize sediment. Reforestation with conifers (planting and seeding) is proposed to re-establish habitats occupied by late-seral species prior to the fire, to link together suitable

remnant habitats, and to restore large expanses of old forest habitat. Large-diameter snags and logs will be retained in sufficient quantity to maintain legacy structures for both the late-seral species and their prey.

Riparian Conservation Areas (RCA) would also be treated to restore riparian values by re-establishing vegetation, reducing excessive fuel loadings, stabilizing stream channels and sediment, and improving ground cover conditions. Contour felling of dead trees is proposed to stabilize sediment. Planting and seeding of native plants, such as conifers and willows, is proposed to re-establish some of the riparian corridors and other special areas.

Responsible Official

The responsible official is Forest Supervisor Arthur L. Gaffrey, Sequoia National Forest, 900 West Grand Avenue, Porterville, California 93257.

Comment Requested

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes that, at this early stage, it is very important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible.

Dated: March 14, 2003.

Arthur L. Gaffrey,

*Forest Supervisor, Sequoia National Forest,
USDA Forest Service.*

[FR Doc. 03-6685 Filed 3-27-03; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Mineral County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393) the Lolo National Forest's Mineral County Resource Advisory Committee will meet on April 8 and April 22 at 6 p.m. until 8 p.m. in Superior, Montana for a business meeting. The meeting is open to the public.

DATES: April 9, 2003 and April 22, 2003.

ADDRESSES: The meeting will be held at the Mineral County Courthouse, 300 River Street, Superior, MT 59872.

FOR FURTHER INFORMATION CONTACT: Robert Harper, Designated Forest Official (DFO), District Ranger, Superior Ranger District, Lolo National Forest, at (406) 822-4233.

SUPPLEMENTARY INFORMATION: Agenda topics for these meetings include the review and selection of project proposals, as authorized under Title II of Pub. L. 106-393. If the meeting location is changed, notice will be posted in local newspapers, including the Mineral Independent and the Missoulian.

Dated: March 24, 2003.

Deborah L.R. Austin,

Designated Federal Official.

[FR Doc. 03-7455 Filed 3-27-03; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing

Service's intention to request an extension for a currently approved information collection in support of the regulation for Account Servicing Policies.

DATES: Comments on this notice must be received by May 27, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Jim Vollmer, Senior Loan Officer, Multi-Family Housing Portfolio Management Division, Rural Housing Service, STOP 0782, 1400 Independence Avenue, SW., Washington, DC 20250-0782; Telephone: (202) 720-1060.

SUPPLEMENTARY INFORMATION:

Title: Account Servicing Policies.

OMB Number: 0575-0075.

Expiration Date of Approval: June 30, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service provides supervised credit in the form of Multi-Family Housing and Community Facility loans and grants. 7 CFR part 1951, subpart A sets forth the policies and procedures, including the collection and use of information, regarding the application of payments on loans made under the programs administered by the agencies and the return of paid-in-full and satisfied promissory notes.

The programs are administered under the provisions of the Consolidated Farm and Rural Development Act (CONACT), as amended. Section 339(a) of the CONACT authorizes the Secretary of Agriculture to make the rules and regulations necessary to carry out the programs authorized within the Act.

Information collection is submitted by Agency borrowers to the local Agency office servicing the county in which their operation is located and is used by agency servicing officials.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response.

Respondents: Individuals or households and businesses and other for-profits.

Estimated Number of Respondents: 110.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 110.

Estimated Total Annual Burden on Respondents: 28 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, at (202) 692-0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 17, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03-7393 Filed 3-27-03; 8:45 am]

BILLING CODE 3410-XV-U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by May 27, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250-1522. Telephone: (202) 720-9550. Fax: (202) 720-4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for approval.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions 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, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250-1522. FAX: (202) 720-4120.

Title: Technical Assistance Programs.
OMB Control Number: 0572-0112.

Type of Request: Extension of a currently approved collection.

Abstract: The Rural Utilities Service is authorized by section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, American Indian tribes, and nonprofit corporations to fund the development of drinking water, wastewater, and solid waste disposal facilities in rural areas with populations of up to 10,000 residents. Under the CONACT, 7 U.S.C. 1925(a), as amended, section 306(a)(14)(A) authorizes Technical Assistance and Training grants, and 7 U.S.C. 1932(b), section 310B authorizes Solid Waste Management grants. Grants are made for 100 percent of the cost of assistance. The Technical Assistance and Training Grants and Solid Waste Management Grants programs are administered through 7 CFR part 1775.

Estimate of Burden: Public reporting for this collection of information is estimated to average 3 hours per response.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 80.

Estimated Number of Responses per Respondent: 17.

Estimated Total Annual Burden on Respondents: 4,168.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690-1078. FAX: (202) 720-4120.

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

Dated: March 10, 2003.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 03-7402 Filed 3-27-03; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by May 27, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250-1522. Telephone: (202) 720-9550. FAX: (202) 720-4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for reinstatement.

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions 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, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250-1522. FAX: (202) 720-4120.

Title: Deferment of RUS Loan Payments for Rural Development Projects.

OMB Control Number: 0572-0097.

Type of Request: Extension of a currently approved collection.

Abstract: The Deferment of RUS Loan Payments for Rural Development Projects program allows RUS electric and telecommunications borrowers to defer the payment of principal and interest on any insured or direct loan made under the Rural Electrification Act (RE Act) of 1936, as amended (7 U.S.C. 912). The purpose of the Deferment program is to encourage borrowers to invest in and promote rural development and rural job creation projects that are based on sound economic and financial analyses. This program is administered through 7 CFR part 1703, subpart H.

Estimate of Burden: Public reporting for this collection of information is estimated to average 3.5 hours per response.

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

Estimated Number of Respondents: 4.

Estimated Number of Responses per Respondent: 10.

Estimated Total Annual Burden on Respondents: 140 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690-1078. FAX: (202) 720-4120.

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

Dated: March 3, 2003.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 03-7403 Filed 3-27-03; 8:45 am]

BILLING CODE 3410-15-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 27, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in

connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Aloud Digital Audio Labeling System; 6515-00-NIB-0226.

Product/NSN: Aloud Audio Labels 6515-00-NIB-0227.

NPA: Central Association for the Blind & Visually Impaired, Utica, New York.

Contract Activity: Veterans Affairs National Acquisition Center, Hines, Illinois.

Services:

Service Type/Location: Janitorial/Custodial, Corporate Accounting Office, Overseas Warehouse, and Ship Stores, Norfolk, Virginia.

NPA: Community Alternatives, Incorporated, Virginia Beach, Virginia.

Contract Activity: Navy Exchange Service Command (NEXCOM), Virginia Beach, Virginia.

Service Type/Location: Janitorial/Custodial, NEXCOM Uniform Support Center, Bldg 1545, Chesapeake, Virginia.

NPA: Community Alternatives, Incorporated, Virginia Beach, Virginia.

Contract Activity: Navy Exchange Service Command (NEXCOM), Virginia Beach, Virginia.

Louis R. Bartalot,

Director, Program Analysis and Evaluation.

[FR Doc. 03-7491 Filed 3-27-03; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 27, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800,

1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603-7740.

SUPPLEMENTARY INFORMATION:

On December 20, December 27, 2002, January 10, and January 17, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 77962, 79044/79045, 68 FR 1434, and 2498) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products

Skilcraft Aerosol Cleaners

Product/NSN: Clean "N" Disinfect/7930-00-NIB-0223.

Product/NSN: Glass Pro/7930-00-NIB-0191.

Product/NSN: Maximum/7930-00-NIB-0192.

Product/NSN: Office Plus/7930-00-NIB-0190.

Product/NSN: X-Spot Carpet Stain Remover/7930-00-NIB-0224.

NPA: Lighthouse for the Blind, St. Louis, Missouri.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Grounds Maintenance, Naval & Marine Corps Reserve Center-Sacramento, Sacramento, California.

NPA: Easter Seal Society of Superior California, Sacramento, California.

Contract Activity: Naval Facilities Engineering Command, Alameda, California.

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Blacklick, Ohio.

NPA: Licking-Knox Goodwill Industries, Inc., Newark, Ohio.

Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota.

Service Type/Location: Janitorial/Custodial, VA Central Iowa Health Care System, Day Care Center, Des Moines, Iowa.

NPA: Goodwill Solutions, Inc., Des Moines, Iowa.

Contract Activity: VA Central Iowa Health Care System, Des Moines, Iowa.

Service Type/Location: Mess Attendant, Willow Grove Naval Air Station Joint Reserve Base, Liberty Dining Hall, Horsham, Pennsylvania.

NPA: Occupational Training Center of Burlington County, Mt. Holly, New Jersey.

Contract Activity: Fleet Industrial Supply Center Norfolk DET Philadelphia, Philadelphia, Pennsylvania.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Louis R. Bartalot,

Director, Program Analysis and Evaluation.

[FR Doc. 03-7492 Filed 3-27-03; 8:45 am]

BILLING CODE 6353-01-P

COMMISSION ON CIVIL RIGHTS**Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee**

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Tuesday, April 1, 2003, at the Providence Marriott Hotel, One Orms Street, Providence, Rhode Island 02904. The purpose of this meeting is to discuss Orientation, briefing, and planning future program activities.

Persons desiring additional information, or planning a presentation

to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, (202) 376-7533 (TDD (202) 376-8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 19, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03-7477 Filed 3-27-03; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE**Bureau of Industry and Security**

[Docket No. 030319065-3065-01]

Revisions to the Unverified List—Guidance as to “Red Flags” Under Supplement No. 3 to 15 CFR Part 732

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: On June 14, 2002, the Bureau of Industry and Security (“BIS”) published a notice in the **Federal Register** that set forth a list of persons in foreign countries who were parties to past export transactions where pre-license checks (“PLC”) or post-shipment verifications (“PSV”) could not be conducted for reasons outside the control of the U.S. Government (“Unverified List”). The notice also advised exporters that the involvement of a listed person as a party to a proposed transaction constitutes a “red flag” as described in the guidance set forth in Supplement No. 3 to 15 CFR Part 732, requiring heightened scrutiny by the exporter before proceeding with such a transaction. The notice also stated that, when warranted, BIS would add and remove persons from the Unverified List.

This notice adds Brilliant Intervest to the Unverified List and removes Xian XR Aerocomponents Co., Ltd. from the Unverified List.

DATES: This notice is effective March 28, 2003.

FOR FURTHER INFORMATION CONTACT:

Thomas W. Andrukonis, Office of Enforcement Analysis, Bureau of Industry and Security, Telephone: (202) 482-4255.

SUPPLEMENTARY INFORMATION: In administering export controls under the

Export Administration Regulations (15 CFR parts 730 to 774) (“EAR”), BIS carries out a number of preventive enforcement activities with respect to individual export transactions. Such activities are intended to assess diversion risks, identify potential violations, verify end-uses, and determine the suitability of end-users to receive U.S. commodities or technology. In carrying out these activities, BIS officials, or officials of other Federal agencies acting on BIS’s behalf, selectively conduct PLCs to verify the bona fides of the transaction and the suitability of the end-user or ultimate consignee. In addition, such officials sometimes carry out PSVs to ensure that U.S. exports have actually been delivered to the authorized end-user, are being used in a manner consistent with the terms of a license or license exception, and are otherwise consistent with the EAR.

In certain instances BIS officials, or other Federal officials acting on BIS’s behalf, have been unable to perform a PLC or PSV with respect to certain export control transactions for reasons outside the control of the U.S. Government (including a lack of cooperation by the host government authority, the end-user, or the ultimate consignee). In a notice issued on June 14, 2002 (67 FR 40910), BIS set forth an Unverified List of certain foreign end-users and consignees involved in such transactions.

The June 14 notice also advised exporters that the participation of a person on the Unverified List in a proposed transaction will be considered by BIS to raise a “red flag” under the “Know Your Customer” guidance set forth in Supplement No. 3 to 15 CFR Part 732 of the EAR. Under that guidance, whenever there is a “red flag,” exporters have an affirmative duty to inquire, verify, or otherwise substantiate the proposed transaction to satisfy themselves that the transaction does not involve a proliferation activity set forth in 15 CFR part 744, and does not violate the EAR.

The **Federal Register** notice further stated that persons on the Unverified List would be added and removed from the list when warranted. BIS has attempted, and was unable to conduct, a PSV in transactions involving the following person: Brilliant Intervest, 14-1, Persian 65C, Jalan Pahang Barat, Kuala Lumpur, Malaysia 53000.

This notice advises exporters that Brilliant Intervest is added to the Unverified List, and a “red flag” now exists for transactions involving this person due to its inclusion on the Unverified List. As a result, exporters

have an affirmative duty to inquire, verify, or otherwise substantiate the proposed transaction to satisfy themselves that the transaction does not involve a proliferation activity set forth in 15 CFR part 744, and does not violate the EAR.

In addition, BIS has now conducted a PSV in a transaction involving Xian XR Aerocomponents Co., Ltd., Xujiawen Beijiao, Xian, Shaanxi, People's Republic of China, ("Xian"), a person included on the Unverified List. This notice advises exporters that Xian is removed from the Unverified List, and

the "red flag" resulting from Xian's inclusion on the Unverified List is rescinded.

The Unverified List, as modified by this notice, is set forth below.

Dated: March 24, 2003.

Lisa A. Prager,
Acting Assistant Secretary for Export Enforcement.

Unverified List as of March 28, 2003

The Unverified List includes names and countries of foreign persons who in the past were parties to a transaction

with respect to which BIS could not conduct a pre-license check ("PLC") or a post-shipment verification ("PSV") for reasons outside of the U.S.

Government's control. Any transaction to which a listed person is a party will be deemed by BIS to raise a "red flag" with respect to such transaction within the meaning of the guidance set forth in Supplement No. 3 to 15 CFR part 732. The "red flag" applies to the person on the Unverified List regardless of where the person is located in the country included on the list.

Name	Country	Last known address
Power Test & Research Institute of Guangzhou Civil Airport Construction Corporation	People's Republic of China	No. 38 East Huangshi Road, Guangzhou.
	People's Republic of China	111 Bei Sihuan Str. East, Chao Yang District, Beijing.
Shaanxi Telecom Measuring Station	People's Republic of China	39 Jixiang Road, Yanta District, Xian, Shaanxi.
Beijing San Zhong Electronic Equipment Engineer Co., Ltd.	People's Republic of China	Hai Dian Fu Yuau, Men Hao 1 Hao, Beijing.
Huabei Petroleum, Administration Bureau, Logging Company.	People's Republic of China	South Yanshan Road, Ren Qiu City, Hebei.
Yunma Aircraft Mfg	People's Republic of China	Yaopu, Anshun, Guizhou.
Daqing Production Logging Institute	People's Republic of China	No. 3 Fengshou Village, Sartu District, Daqing City, Heilongjiang.
Dee Communications M SDN.BHD	Malaysia	G5/G6, Ground Floor, Jin Gereja, Johor Bahru.
Brilliant Intervest	Malaysia	14-1, Persian 65C, Jalan Pahang Barat, Kuala Lumpur, 53000.
Arrow Electronics	United Arab Emirates	204 Arbift Tower, Benyas Road, Dubai.

[FR Doc. 03-7484 Filed 3-27-03; 8:45 am]
BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-851]

Certain Preserved Mushrooms from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

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

SUMMARY: The Department of Commerce has received requests to conduct a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China. In accordance with 19 CFR 351.214(d), we are initiating a review for Primera Harvest (Xiangfan) Co., Ltd. and Xiamen International Trade & Industrial Co., Ltd., exporters and producers of certain preserved mushrooms from the People's Republic of China.

EFFECTIVE DATE: March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Davina Hashmi, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-1766 and (202) 482-0984, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests from Primera Harvest (Xiangfan) Co., Ltd. ("Primera Harvest") and Xiamen International Trade & Industrial Co., Ltd. ("XITIC"), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC"), which has a February anniversary month.

As required by 19 CFR 351.214(b)(2)(i), (ii), and (iii)(A), each company identified above has certified that it did not export certain preserved mushrooms to the United States during the period of investigation ("POI"), and that it has never been affiliated with any exporter or producer which did export certain preserved mushrooms during the POI. The company has further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to

the Department's regulations at 19 CFR 351.214(b)(2)(iv)(A), each company submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that shipment, and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act, as amended, and 19 CFR 351.214(b), and based on information on the record, we are initiating the new shipper review for Primera Harvest and XITIC.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on certain preserved mushrooms from the PRC. Normally we would issue the preliminary results of this review not later than 180 days after the date on which the review is initiated. However, on March 12, 2003, Primera Harvest and XITIC agreed to waive the time limits in order that the Department, pursuant to 19 CFR 351.214(j)(3), may conduct this review concurrent with the fourth administrative review of this order for

the period February 1, 2002- January 31, 2003, which is being conducted pursuant to section 751(a)(1) of the Act.

Therefore, we intend to issue the final results of this review not later than 245

days after the last day of the anniversary month.

Antidumping Duty New Shipper Review	Period to be Reviewed
PRC: Certain Preserved Mushrooms, A-570-851:	
Primera Harvest (Xiangfan) Co., Ltd.	02/01/02 - 01/31/03
Xiamen International Trade & Industrial Co., Ltd.	02/01/02 - 01/31/03

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the above-listed companies. Because XITIC and Xiangfan have certified that they both produce and export the subject merchandise, the sale of which was the basis for their new shipper review requests, we will apply the bonding privilege only to entries of the subject merchandise for which they are both the producer and exporter.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: March 21, 2003.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03-7520 Filed 3-27-03; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031403F]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability and request for comments.

SUMMARY: Notice is hereby given of the availability of a draft Routine Road Maintenance Program (RMP) that Marion County, Oregon, Department of Public Works, has submitted pursuant to Endangered Species Act (ESA). NOAA Fisheries promulgated a protective rule for 14 threatened salmon

and steelhead Evolutionarily Significant Units (ESUs). The RMP would affect four ESUs of threatened salmonids identified in the **SUPPLEMENTARY INFORMATION** section. The 4(d) rule provides for limits on ESA take prohibitions for the various activities set out in the rule. The RMP addresses the limit for routine road maintenance activities of any state, city, county or port. This document serves to notify the public of the availability of the RMP for review and comment before a final approval or disapproval is made by NOAA Fisheries.

DATES: Written comments on the draft RMP must be received no later than 5 p.m. Pacific Standard Time on April 28, 2003.

ADDRESSES: Written comments should be sent to Dr. Nancy Munn, Habitat Conservation Division, National Marine Fisheries Service, 525 NE Oregon Street, Suite 500, Portland, OR 97232.

Comments may also be faxed to 503-231-6893. Copies of the entire RMP are available on the Internet at: <http://publicworks.co.marion.or.us/environment/salmon/Limit10/PDF/Oct2002/02index.htm>, or from the address posted on that site. Comments will not be accepted if submitted via email or the Internet.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Munn at phone number: 503-231-6269, or e-mail: nancy.munn@noaa.gov.

SUPPLEMENTARY INFORMATION: This notice is relevant to the following four threatened salmon ESUs:

Chinook salmon (*Oncorhynchus tshawytscha*); threatened Upper Willamette River (UWR) and Lower Columbia River (LCR).

Steelhead (*Oncorhynchus mykiss*); threatened Upper Willamette River (UWR) and Lower Columbia River (LCR).

Background

Marion County submitted the RMP for routine road maintenance activities that might affect certain salmonid ESUs listed as threatened in Marion County. The RMP was designed so that routine road maintenance activities would be

protective of salmonids and their habitat.

As specified in the July 10, 2000, ESA 4(d) rule for salmon and steelhead (65 FR 42422) under limit 10(I), take prohibitions to threatened species of salmonids do not apply to routine road maintenance activities of a state, county, city or port that complies with a program that is substantially similar to that contained in the Oregon Department of Transportation (ODOT) Routine Road Maintenance Water Quality and Habitat Guide Best Management Practices (Guide, July 1999), and that is determined to meet or exceed the protections provided in the ODOT Guide. NOAA Fisheries may approve a routine road maintenance program of any state, city, county or port that contains management practices that are equivalent to or better than those in the ODOT Guide. Prior to final approval of a routine road maintenance program, NOAA Fisheries must publish notification in the **Federal Register** announcing the program's availability for public review and comment.

Part 1 of the RMP is a cover letter to D. Robert Lohn, Regional Administrator of NOAA Fisheries and a statement of commitment from Marion County to implement the RMP. In Part 2, the RMP describes the program and provides information on the legal authority for the program. In Part 3, the RMP provides a description of the geographic area to which the program applies, including a list of county roads or locations where maintenance activities may impact streams, the location of salmon habitat in the relevant watersheds, and an analysis of the environmental baseline of those watersheds. Part 3 also includes maps that show fish distributions and other relevant background information. In Part 4, the RMP describes the listed species distribution and status, and in Part 5, a bibliography of relevant reports are provided. In Part 6, the RMP makes an affirmative conclusion that the program is substantially similar to or better than ODOT's program, and summarizes the training, monitoring, and reporting elements of the RMP.

The RMP also includes four attachments that are fundamental to the

program. Attachment 1 is a table that compares ODOT's and Marion County's best management practices. Attachment 2 describes the best management practices being implemented by Marion County, including their dust abatement activities. Attachment 3 describes and provides documentation for the Salmon Recovery Mapping Project. The Salmon Recovery Mapping Project documents the best available biological and natural resource geospatial data relevant to threatened salmonids in Marion County and directs or limits best management practices where their activities are adjacent to or have the potential to affect threatened salmonids. The end result is two mapping projects: the Sensitive Area Maps that depict the relevant biological and natural resource data at a scale that can be used to direct activities on the ground, and the Environmentally Sensitive Zone Maps that direct or limit best management practices along county roads. The maps are available for review on the Internet at the site identified in **ADDRESSES**. Attachment 4 provides instructions on how to connect the best management practices to the Environmentally Sensitive Zone Maps.

The RMP defines what activities are routine road maintenance. These consist of maintenance activities that are conducted on currently serviceable structures, facilities, and equipment, involve no expansion of or change in use, and do not result in significant negative hydrological impact. The Marion County best management practices (Attachment 2) includes activities beyond routine road maintenance activities as presented in ODOT's Guide (e.g., park maintenance, ferry maintenance and operation, fleet maintenance, service districts) and these specific activities are not eligible for approval at this time. Approval or disapproval of the RMP will depend on NOAA Fisheries' findings after public review and comment.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 424222, July 10, 2000) identifies specific categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to activities associated with routine road maintenance provided that a state or local program has been

approved by NOAA Fisheries to be in accordance with the salmon and steelhead 4(d) rule (65 FR 424222, July 10, 2000).

Dated: March 18, 2003.

Phil Williams,

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

[FR Doc. 03-7515 Filed 3-27-03; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 000410097-3067-08] [RIN 0660-ZA-11]

Public Telecommunications Facilities Program: Notice of Funds Available

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: On October 17, 2002, the National Telecommunications and Information Administration (NTIA) announced the Notice of Closing Date and Solicitation of Television Applications for the Public Telecommunications Facilities Program (PTFP). On March 5, 2003, the NTIA announced the Notice of Closing Date and Solicitation of Radio and Nonbroadcast Applications for the PTFP. On February 20, 2003, legislation appropriating FY 2003 funds for the PTFP was completed. NTIA is now publishing this Notice of Availability of Funds to announce the funds available for fiscal year 2003 PTFP grants.

ADDRESS: To obtain an application package, submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H-4625, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482-5802; fax: (202) 482-2156. Materials needed to complete an application can be obtained electronically via PTFP's Web site at <http://www.ntia.doc.gov/ptfp>.

SUPPLEMENTARY INFORMATION:

Authority

The Consolidated Appropriations Resolution, 2003, Public Law 108-7.

Funding Availability

On October 17, 2002, the National Telecommunications and Information

Administration (NTIA) announced the Notice of Closing Date and Solicitation of Television Applications for the Public Telecommunications Facilities Program (PTFP) (67 FR 64297). On March 5, 2003, the NTIA announced the Notice of Closing Date and Solicitation of Radio and Nonbroadcast Applications for the PTFP (68 FR 10610). The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce announces that approximately \$21 million is available for award to applicants submitting applications in response to the Notices of Closing Date published October 17, 2002 and March 5, 2003. Pursuant to Pub. L. 108-7, the Consolidated Appropriations Resolution, 2003, the Congress appropriated \$41.1 million for Public Telecommunications Facilities Program grants. NTIA has allocated approximately \$20 million from the \$41.1 million for funding additional phases of multi-year projects initially funded in FY 2000, FY 2001 and FY 2002.

Dr. Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 03-7522 Filed 3-27-03; 8:45 am]

BILLING CODE 3510-60-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Request under the African Growth and Opportunity Act (AGOA)

March 25, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for a determination that certain light- and medium-weight dyed warp pile cotton velvet, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner.

SUMMARY: On March 21, 2003, the Chairman of CITA received a petition from Crystal Apparel Limited of Hong Kong and Sinotex Mauritius Limited in Mauritius alleging that certain light- and medium-weight dyed warp pile cotton velvet for use in men's and boys' jackets and pants and women's and girls' jackets, dresses, skirts, pants, and shorts, cannot be supplied by the domestic industry in commercial

quantities in a timely manner. It requests that such apparel articles of such fabrics be eligible for preferential treatment under the AGOA. CITA hereby solicits public comments on this request, in particular with regard to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner.

Comments must be submitted by April 14, 2003 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

EFFECTIVE DATE: March 28, 2003

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA, Section 1 of Executive Order No. 13191 of January 17, 2001.

Background

The AGOA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The AGOA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country, if it has been determined that such fabric or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures in the Federal Register that it will follow in considering requests (66 FR 13502).

On March 21, 2003, the Chairman of CITA received a petition from Crystal Apparel Limited of Hong Kong and Sinotex Mauritius Limited in Mauritius alleging that certain light- and medium-weight dyed warp pile cotton velvet, classified in subheading 5801.25.00 of the Harmonized Tariff Schedule of the United States (HTSUS), with the following specifications, cannot be

supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the AGOA for certain jackets, dresses, skirts, pants and shorts, that are cut and sewn in one or more beneficiary sub-Saharan African countries from such fabrics.

1. Name: light-weight dyed warp pile velvet

HTS subheading: 5801.25.00
Fiber Composition: 100 percent combed cotton
Yarn: 230 g/m2 to 260 g/m2
Construction:
Woven Fabric - 96 x 98
Weft - 42/2 ply + 42/2 ply
Warp - 32 single yarn

Woven Fabric - 96 x 102
Weft - 42/2 ply + 60/2 ply
Warp - 32 single yarn

2. Name: medium-weight dyed warp pile velvet

HTS subheading: 5801.25.00
Fiber Composition: 97 percent cotton, 3 percent spandex
Yarn: 280 g/m2 to 330 g/m2
Construction:
Woven Fabric - 110 x 84
Weft - 42/2 ply + 50/2 ply
Warp - 30 single yarn + 40 denier spandex

Woven Fabric - 126 x 84
Weft - 42/2 ply + 50/2 ply
Warp - 30 single yarn + 40 denier spandex

CITA is soliciting public comments regarding this request, particularly with respect to whether such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other products that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabrics for the purposes of the intended use. Comments must be received no later than April 14, 2003. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

If a comment alleges that such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn or fabric stating that it produces the fabrics that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure for the full extent permitted by law. CITA will make available to the public

non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03-7621 Filed 3-26-03; 11:57 am]

BILLING CODE 3510-DR-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0147]

Federal Acquisition Regulation; Information Collection; Pollution Prevention and Right-to-Know Information

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000-0147).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning pollution prevention and right-to-know information. This OMB clearance expires on May 31, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 27, 2003.

ADDRESSES: Submit comments, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Laura Smith, Acquisition Policy Division, GSA, 208-7279.

SUPPLEMENTARY INFORMATION:

A. Purpose

Executive Order 12856 of August 3, 1993, "Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements," requires that Federal facilities comply with the planning and reporting requirements of the Pollution Prevention Act of 1990 and the Emergency Planning Community Right-to-Know Act of 1986. The executive order requires that contracts to be performed on a Federal facility provide for the contractor to supply to the Federal agency all information the Federal agency deems necessary to comply with these reporting requirements.

B. Annual Reporting Burden

Number of Respondents: 2,550.

Responses Per Respondent: 7.647.

Annual Responses: 19,500.

Average Burden Per Response: 45 minutes.

Total Burden Hours: 14,500.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0147, Pollution Prevention and Right-to-Know Information in all correspondence.

Dated: March 25, 2003.

Ralph J. Destefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 03-7473 Filed 3-27-03; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed

public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 27, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Assistant Secretary of the Army (Manpower & Reserve Affairs), ATTN: SAMR-FMMR, (John Anderson), 111 Army Pentagon, Washington, DC 20310-0111. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 695-5509.

Title, OMB Number: The Contractor Manpower Reporting Pilot Study, (To be Determined.)

Needs and Uses: This pilot program will greatly enhance the ability of the Army to identify and track its contractor workforce. Modern systems do not have contractor manpower data that is collected by the Contractor Manpower Reporting System—*i.e.*, Estimated Direct Labor Hours, Estimated Direct Labor dollar and Organization supported. Existing financial and procurement systems have obligation amounts of an unknown mix, and the Department of the Army is not able to trace the funding to the organization supported.

Affected Public: Business or other for profit.

Annual Burden Hours: 80,445.

Number of Respondents: 31,870.

Responses Per Respondent: 55.

Average Burden Per Response: 0.0083.

Frequency: Annually.

SUPPLEMENTARY INFORMATION: Like all other Federal Government agencies, the Army's reliance on service contractor employees has increased significantly over the past few years. Moreover, this

trend is likely to continue. Hence, it is more important than ever, that Government agencies have an accurate picture of what is rapidly becoming a "blended workforce" consisting of Federal employees and contractor personnel.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03-7496 Filed 3-27-03; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Infectious JEV cDNA Clones that Produce Highly Attenuated Recombinant JEV, and Vaccines Thereof

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent No. 5,736,148 entitled "Infectious JEV cDNA Clones that Produce Highly Attenuated Recombinant JEV, and Vaccines Thereof," issued April 7, 1998. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR-JA Scott Street, Fort Detrick, Frederick, MD 21702-5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619-7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619-6664, both at telefax (301) 619-5034.

SUPPLEMENTARY INFORMATION: cDNA clones containing the entire genome of Japanese encephalitis virus (JEV) were used to produce infectious, recombinant JEV particles with diverse virulence properties. Certain viruses retained the immunogenicity of JEV, but lacked the ability to cause encephalitis. The mutation associated with this loss of neurovirulence was localized to a nucleotide substitution in the codon encoding the 138th amino acid of the envelop protein, resulting in a mutation of an acidic amino acid to a basic amino acid. Attenuated viruses containing this mutation from the basis of a greatly improved, molecularly defined vaccine

for the prevention of Japanese encephalitis in humans.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03-7497 Filed 3-27-03; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of Surplus Land (Honey Lake) Located at Sierra Army Depot, Herlong, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: This notice identified the surplus real property, Honey Lake, which is located at Sierra Army Depot, Herlong, CA (SIAD). SIAD is located mid-way between Reno, NV and Susanville, CA.

DATES: Letters of intent from eligible public agencies must be submitted in writing no later than April 18, 2003, to Ms. Susan Krinks, U.S. Army Corps of Engineers, Sacramento District, 1325 J Street, Sacramento, CA 95814-2922.

FOR FURTHER INFORMATION CONTACT: For more information regarding Honey Lake, contact Ms. Susan Krinks, Realty Specialists, at (916) 557-6815.

SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 for public benefit uses, and under 10 U.S.C. 2694a for natural resource conservation uses. Honey Lake is subject to a reversion to the State of California pursuant to California Senate Bill No. 573, Chapter 845. Honey Lake is a shallow, alkaline lake with no outlet. Lake levels fluctuate widely, and during drought years, lake levels are greatly reduced, or the lake may become completely dry. The surrounding area is rural and sparsely populated. Future uses may be limited to those described above.

Marvin D. Fisher,

Chief, Real Estate Division, U.S. Army Engineer District, Sacramento.

[FR Doc. 03-7499 Filed 3-27-03; 8:45 am]

BILLING CODE 3710-EZ-M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Caloosahatchee River Aquifer Storage and Recovery Pilot Project Located Southwest of LaBelle on the Berry Groves Property, Hendry County, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps), intends to prepare an integrated Pilot Project Design Report and Draft Environmental Impact Statement (DEIS) for the Caloosahatchee River Aquifer Storage and Recovery (ASR) Pilot Project. The study is a cooperative effort between the Corps and the South Florida Water Management District (SFWMD), which is also a cooperating agency for this DEIS. This project will determine the feasibility of using ASR technology for water storage in the Caloosahatchee River basin as part of the Comprehensive Everglades Restoration Program. It will also collect scientific data to address the uncertainties associated with the ASR technology and for future optimization and design studies.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Conner, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, PO Box 4970, Jacksonville, FL 32232-0019, or by telephone at 904-232-1782.

SUPPLEMENTARY INFORMATION:

a. *Authorization:* The Water Resources Development Act (WRDA) of 2000 (Pub. L. 106-541) was enacted in December 2000. Title VI of WRDA 2000 approved the Comprehensive Plan, provided authorization of an initial suite of projects, and included a number of other provisions including outreach and periodic reports to Congress. The Caloosahatchee ASR pilot project was authorized by Section 601(b)(2)(B) of WRDA 2000.

b. *Project Scope:* The pilot project will determine the feasibility of ASR technology for water storage at the site, the water quality characteristics of source waters, native subsurface waters and recovered waters and appropriate water treatment requirements, and recommend operational goals for a full scale ASR project within the Caloosahatchee River basin. The pilot project includes the construction of one ASR well into the Floridan Aquifer with

a capacity of 5 million gallons per day, a source water collection system that will supply water to the ASR system, pre-injection and post recovery water treatment facilities, and other associated piping and treatment systems.

Operational plans for the test pilot are to collect surface water, treat to drinking water standards, and inject water into the Floridan Aquifer System (FAS) for a minimum of two cycle tests. Each cycle test includes a period of water storage followed by a period of recovery and discharge. Recovered water will be monitored and treated prior to discharge into surface water.

c. *Preliminary Alternatives:*

Formulation of alternative plans will involve the selection of collection well configuration, water treatment technologies, investigation of intake and discharge sites, and investigation of best configuration of surface facilities of the project.

The Environmental Impact Statement (EIS) evaluation of the pilot project will include an evaluation of adverse environmental impacts, including but not limited to, water quality, socio-economic, archaeological and biological. In addition to adverse impacts, the evaluation will also focus on how well the plans perform with regard to specific technologic performance measure.

d. *Issues:* The EIS will consider impacts on water quality, ecosystem habitat, threatened and endangered species, health and safety, aesthetics and recreation, fish and wildlife resources, cultural resources, water availability, flood protection, and other potential impacts identified through scoping, public involvement, and interagency coordination.

e. *Scoping:* A scoping letter will be issued on March 2003 to interested parties. In addition, all parties are invited to participate in the scoping process by identifying any additional concerns on issues, studies needed, alternatives, procedures, and other matters related to the scoping process. As there have already been meetings held on the ASR technology and the related C-43 Reservoir Project, there is no plan for a public scoping meeting at this time.

f. *Public Involvement:* We invite the participation of affected Federal, State and local agencies, affected Indian tribes, and other interested private organizations and parties.

g. *Coordination:* The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service under Section 7 of the Endangered Species Act, with the FWS under the Fish and

Wildlife Coordination Act, and with the State Historic Preservation Officer.

h. Other Environmental Review and Consultation: The proposed action would involve evaluation for compliance with guidelines pursuant to Section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to Section 401 of the Clean Water Act; certification of state lands, easements and right of ways, and determination of Coastal Zone Management Act consistency.

i. Agency Role: As cooperation agency, non-Federal sponsor, and leading local expert, SFWMD will provide information and assistance on the resources to be impacted and alternatives.

j. DEIS Preparation: The integrated Pilot Project Design Report, including a DEIS, is currently estimated for publication in March 2006.

Dated: March 12, 2003.

James C. Duck,

Chief, Planning Division.

[FR Doc. 03-7501 Filed 3-27-03; 8:45 am]

BILLING CODE 3710-AJ-M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the C-43 Basin Storage Reservoir Project adjacent to the Caloosahatchee River, Hendry, Glades, Charlotte, or Lee County, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps), intends to prepare an integrated Project Implementation Report and Draft Environmental Impact Statement (DEIS) for the C-43 Basin Storage Reservoir Project, part 1. The study is a cooperative effort between the Corps and the South Florida Water Management District (SFWMD), which is also a cooperating agency for this DEIS. One of the recommendations of the final report of the Central & South Florida (C&SF) Comprehensive Review Study (Restudy) was the C-43 Basin Storage Reservoir Project. This project includes the construction of an approximately 160,000 acre-foot storage area within the Caloosahatchee Basin to capture and store stormwater runoff and water releases from Lake Okeechobee. Stored water would be used to meet the

environmental demands of the Caloosahatchee River and Estuary and urban and agricultural demand as able.

DATES: A public meeting is scheduled for May 1, 2003, 7 p.m. in Hendry County at the Dallas B. Townsend Agricultural Center, 1085 Pratt Boulevard, LaBelle, FL.

FOR FURTHER INFORMATION CONTACT: Mrs. Susan Conner, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL, 32232-0019, or by telephone at 904-232-1782.

SUPPLEMENTARY INFORMATION:

a. Authorization: Section 601 of the Water Resources Development Act of 2000 authorized a framework and guide for modifications to the C&SF Project to restore the south Florida ecosystem and to provide for the other water-related needs of the region, including the C-43 Basin Storage Reservoir Project.

b. Project Scope: The purpose of this project is to capture C-43 Basin runoff and releases from Lake Okeechobee. These facilities will be designed for water supply benefits, some flood attenuation, to provide environmental water supply deliveries to the Caloosahatchee Estuary, and water quality benefits to reduce salinity and nutrient impacts of runoff to the estuary. It is assumed that, depending upon the location of the facility and pollutant loading conditions in the watershed, the facility could be designed to achieve significant water quality improvements, consistent with appropriate pollution load reduction targets. The project as proposed will include the construction of an above-ground reservoir(s) with a total capacity of approximately 160,000 acre-feet, located in the C-43 Basin in Hendry, Glades, Charlotte, or Lee Counties. Water levels could fluctuate up to 8 feet above grade.

c. Preliminary Alternatives: Formulation of alternative plans will involve the selection of the most suitable site or sites for a reservoir, depth and configurations of the impoundment(s), investigation of intake and discharge sites, and investigation opportunities in configuration designs to provide significant water quality improvements for the project.

The Environmental Impact Statement (EIS) evaluation of the project will include an evaluation of adverse environmental impacts, including but not limited to, water quality, socio-economic, archeological and biological. In addition to adverse impacts, the evaluation will also focus on how well the plans perform with regard to specific ecological and other performance measures.

d. Issues: The EIS will consider impacts on water quality, ecosystem habitat, threatened and endangered species, health and safety, aesthetics and recreation, fish and wildlife resources, culture resources, water availability, flood protection, and other potential impacts identified through scoping, public involvement, and interagency coordination.

e. Scoping: Initial project scoping began in February 2002 at a public meeting in Hendry County. A scoping letter was issued in February 2002 to interested parties inviting all interested parties and government agencies to participate in the scoping process by identifying any additional concerns on issues, studies needed, alternatives, procedures, and other matters related to the scoping process. A NEPA scoping letter will be issued in March 2003, along with this notice. A public meeting is scheduled for May 1, 2003 (see DATES above).

f. Public Involvement. We invite the participation of affected Federal, State and local agencies, affected Indian tribes, and other interested private organizations and parties.

g. Coordination: The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service under section 7 of the Endangered Species Act, with the FWS under the Fish and Wildlife Coordination Act, and with the State Historic Preservation Officer.

h. Other Environmental Review and Consultation: The proposed action would involve evaluation for compliance with guidelines pursuant to section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to section 401 of the Clean Water Act; certification of State lands, easements and right of ways, and determination of Coastal Zone Management Act consistency.

i. Agency Role: As cooperation agency, non-Federal sponsor, and leading local expert, SFWMD will provide information and assistance on the resources to be impacted and alternatives.

j. DEIS Preparation: The integrated Project Implementation Report (PIR) including a DEIS, is currently estimated for publication in September 2004.

Dated: March 17, 2003.

James C. Duck,

Chief, Planning Division.

[FR Doc. 03-7498 Filed 3-27-03; 8:45 am]

BILLING CODE 3710-AJ-M

DEPARTMENT OF DEFENSE**Department of the Army; Corps of Engineers****Intent To Prepare a Draft Environmental Impact Statement for the Palm Beach Harbor Lake Worth Access Channel Expansion, Section 107 Small Navigation Project; Correction**

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice; correction.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Jacksonville District published a notice of intent to prepare a Draft Environmental Impact Statement (DEIS) for the Palm Beach Harbor Lake Worth Access Channel Expansion, Section 107 Small Navigation Project on February 25, 2003 (68 FR 8744). Due to a typographical error, the Palm Beach County Department of Environmental Resources was identified as a cooperating agency and local sponsor of the project. The correction states that the preparation of the DEIS will be completed solely by the Corps, and that the local sponsor of the project is Florida Inland Navigation District (FIND).

FOR FURTHER INFORMATION CONTACT: James McAdams, 904-232-2117, Environmental Branch, Planning Division, P.O. Box 4970, Jacksonville FL 32232-0019.

Correction

In the **Federal Register** of February 25, 2003 (68 FR 8744) concerning intent to prepare a DEIS for the Palm Beach Harbor Lake Worth Access Channel Expansion, Section 107 Small Navigation Project on page 8744 third column, under the subheading "Agency Role" the statement should read as follows:

"The DEIS will be completed solely by the Corps of Engineers, Jacksonville District, and that the local sponsor of the project is the Florida Inland Navigation District."

Dated: March 7, 2003.

Loren M. Mason,

Chief, Environmental Branch.

[FR Doc. 03-7500 Filed 3-27-03; 8:45 am]

BILLING CODE 3710-AJ-M

DEPARTMENT OF EDUCATION**National Advisory Committee on Institutional Quality and Integrity, (National Advisory Committee); Meeting**

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to announce the public meeting of the National Advisory Committee and invite third-party oral presentations before the Committee. This notice also presents the proposed agenda and informs the public of its opportunity to attend this meeting. The notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

When and Where Will the Meeting Take Place?

We will hold the public meeting on June 9, 2003 from 8:45 a.m. until 6 p.m., and on June 10, 2003 from 8:30 a.m. until 4:30 p.m. at the Ritz Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, Virginia 22202. You may call the hotel on (703) 415-5000 to inquire about rooms.

What Assistance Will Be Provided to Individuals With Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Who Is the Contact Person for the Meeting?

Please contact Ms. Bonnie LeBold, the Executive Director of the National Advisory Committee on Institutional Quality and Integrity, if you have questions about the meeting. You may contact her at the U.S. Department of Education, room 7007, MS 7592, 1990 K St., NW., Washington, DC 20006, telephone: (202) 219-7009, fax: (202) 219-7008, e-mail: Bonnie.LeBold@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339.

What Is the Authority for the National Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA) as amended, 20 U.S.C. 1011c.

What Are the Functions of the National Advisory Committee?

The Committee advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies in order to establish the interim eligibility of those institutions to participate in Federally funded programs.
- The relationship between: (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

What Items Will Be on the Agenda for Discussion at the Meeting?

Agenda topics will include the review of agencies that have submitted petitions for initial recognition or renewal of recognition, submitted a progress report, or submitted interim reports. In addition, the National Advisory Committee will discuss its recommendations pertaining to the reauthorization of the Higher Education Act, as amended.

What Agencies Will the Advisory Committee Review at the Meeting?

The Advisory Committee will review the following agencies during its June 9-10, 2003 meeting.

Nationally Recognized Accrediting Agencies

Petition for Initial Recognition

1. Commission on English Language Program Accreditation (Requested scope of recognition: the accreditation of postsecondary English language programs and institutions in the United States.)

2. Council on Naturopathic Medical Education (Requested scope of recognition: the accreditation and pre-accreditation throughout the United States of graduate-level, four-year naturopathic medical educational programs leading to the Doctor of Naturopathic Medicine (N.D. or N.M.D.) or Doctor of Naturopathy (N.D.) degree.)

3. Teacher Education Accreditation Council (Requested scope of recognition: the accreditation throughout the United States of professional education programs in institutions offering baccalaureate and graduate degrees for the preparation of teachers K-12.)

Petitions for Renewal of Recognition

1. Montessori Accreditation Council for Teacher Education (Current scope of recognition: the accreditation of Montessori teacher education institutions and programs throughout the United States evaluated by the following review committees: the American Montessori Society Review Committee and the Independent Review Committee only.)

2. Western Association of Schools and Colleges, Accrediting Commission for Schools (Current scope of recognition: the accreditation and preaccreditation ("Candidate for Accreditation") of adult and postsecondary schools that offer programs below the degree level in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands.)

Interim Reports (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted renewed recognition to the agency.)

1. Accrediting Association of Bible Colleges, Commission on Accreditation.

2. American Academy for Liberal Education.

3. Association for Clinical Pastoral Education, Inc., Accreditation Commission.

4. American Physical Therapy Association, Commission on

Accreditation in Physical Therapy Education.

5. American Veterinary Medical Association, Council on Education.

6. Distance Education and Training Council, Accrediting Commission.

7. National League for Nursing Accrediting Commission.

Progress Report: A report on the agency's implementation of its new accreditation process.

1. Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities

State Agency Recognized for the Approval of Public Postsecondary Vocational Education

Petition for Renewal of Recognition

1. Missouri State Board of Education

State Agency Recognized for the Approval of Nurse Education

Petition for Renewal of Recognition

1. Missouri State Board of Nursing

Who Can Make Third-Party Oral Presentations at This Meeting?

We invite you to make a third-party oral presentation before the National Advisory Committee concerning the recognition of any agency published in this notice.

How Do I Request to Make an Oral Presentation?

You must submit a written request to make an oral presentation concerning an agency listed in this notice to the contact person *so that the request is received via mail, fax, or e-mail no later than May 16, 2003*. Your request (*no more than 6 pages maximum*) must include:

1. The names, addresses, phone numbers, and fax numbers of all persons seeking an appearance,

2. The organization they represent, and

3. A brief summary of the principal points to be made during the oral presentation.

If you wish, you may attach documents illustrating the main points of your oral testimony. Please keep in mind, however, that *any attachments are included in the 6-page limit*. Please do not send materials directly to Committee members. Only materials submitted by the deadline to the contact person listed in this notice and in accordance with these instructions become part of the official record and are considered by the Committee in its deliberations. Documents received after the May 16, 2003 deadline will not be distributed to the Advisory Committee for their consideration. Individuals

making oral presentations may not distribute written materials at the meeting.

If I Cannot Attend the Meeting, Can I Submit Written Comments Regarding an Accrediting Agency in Lieu of Making an Oral Presentation?

This notice requests third-party oral testimony, not written comment. A request for written comments on agencies that are being reviewed during this meeting was published in the **Federal Register** on February 6, 2003. The Advisory Committee will receive and consider only written comments submitted by the deadline specified in that **Federal Register** notice.

How Do I Request to Present Comments Regarding General Issues Rather Than Specific Accrediting Agencies?

At the conclusion of the meeting, the Committee, at its discretion, may invite attendees to address the Committee briefly on issues pertaining to the functions of the Committee, which are listed earlier in this notice. If you are interested in making such comments, you should inform Ms. LeBold before or during the meeting.

How May I Obtain Access to the Records of the Meeting?

We will record the meeting and make a transcript available for public inspection at the U.S. Department of Education, 1990 K St., NW., Washington, DC 20006 between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. It is preferred that an appointment be made in advance of such inspection.

How May I Obtain Electronic Access to This Document?

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

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

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

Authority: 5 U.S.C. Appendix 2.

Dated: March 24, 2003.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 03-7479 Filed 3-27-03; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

[Number DE-PS36-03GO93003]

First Steps Toward Developing Renewable Energy and Energy Efficiency on Tribal Lands: Strategic and Energy Resource Planning, Capacity Building, and Organizational Development

AGENCY: Golden Field Office, Department of Energy.

ACTION: Notice of issuance of solicitation for financial assistance applications.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance rules, 10 CFR 600.8, is soliciting applications for financial assistance from Federally-recognized Tribes or Alaskan Native Corporations for strategic planning, energy options analysis or resource planning, human capacity building, and organizational development related to sustainable energy efficiency implementation or renewable energy development.

DATES: Issuance of the solicitation is planned for early March 2003.

ADDRESSES: To obtain a copy of the solicitation, once issued, interested parties should access the DOE Golden Field Office home page at <http://www.golden.doe.gov/businessopportunities.html>, click on "Solicitations," and then access the solicitation number identified above. The DOE Golden Field Office home page will provide a link to the solicitation synopsis in the Industry Interactive Procurement System (IIPS) Web site and provides instructions on using IIPS. The solicitation will be available directly through IIPS at <http://e-center.doe.gov> by browsing opportunities by Contract Activity, for those solicitations issued by the Golden Field Office. To be notified when the solicitation is issued, join the Solicitation Mailing List specific to this notice through IIPS. DOE will not issue paper copies of the solicitation. For questions regarding the operation of IIPS, contact the IIPS Help Desk at IIPS_HelpDesk@e-center.doe.gov or at (800) 683-0751.

FOR FURTHER INFORMATION CONTACT: Tammie Lawler, Contract Specialist, via facsimile at 303-275-4788 or

electronically at tribalgo93003@go.doe.gov. Responses to questions will be made by amendment to the solicitation and posted on the DOE Industry Interactive Procurement System (IIPS) Web site.

SUPPLEMENTARY INFORMATION: DOE's Tribal Energy Program promotes tribal energy self-sufficiency and fosters employment and economic development on tribal lands through financial assistance to Federally-recognized Tribes and Alaskan Native Corporations. Under this solicitation, DOE is soliciting applications from Federally-recognized Tribes or Alaskan Native Corporations (hereafter referred to as "tribes") for strategic planning, energy options analysis or resource planning, human capacity building, and organizational development related to sustainable energy efficiency implementation or renewable energy development.

DOE will only consider applications from Federally-recognized tribes on whose tribal lands the project will be located. Applications from a consortium will be accepted but must be submitted by a single tribe representing the consortium. A Statement of Commitment from an authorized representative of the tribe (Chief, Governor, President, Chairperson or other representative authorized to commit the tribe), that includes a Statement of Commitment from each participant, will be required as a part of the application.

Awards under this solicitation are anticipated to be grants with terms of one year. Subject to funding availability, the total DOE funding available under this solicitation will be between \$500,000 and \$1,000,000. DOE anticipates selecting 5 to 20 applications for negotiation toward award. No cost share is required in order to be considered for awards under this solicitation. Solicitation number DE-PS36-03GO93003 will include complete information including technical aspects, funding, application preparation instructions, evaluation criteria, and other factors that will be considered when selecting applications for funding. Issuance of the solicitation is planned for early March 2003, with applications due approximately 50 days after the solicitation has been issued. Information on Financial Assistance Regulations (10 CFR part 600), proposal forms, award format, or post award forms can be obtained through the DOE Golden Field Office Home Page <http://www.golden.doe.gov/businessopportunities.html>.

Issued in Golden, Colorado, on March 11, 2003.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 03-7518 Filed 3-27-03; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Department of Energy's Fleet Alternative Fuel Vehicle Acquisition

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of availability of the Department of Energy's annual report on its Alternative Fuel Vehicle Acquisitions for fiscal year 2001.

SUMMARY: In compliance with the Energy Policy Act of 1992 and Executive Order 13149, this notice announces the availability of the 2001 report which summarizes the U.S. Department of Energy's (DOE) compliance with the annual alternative fuel vehicle acquisition requirement for its vehicle fleet. Additionally, this report includes data concerning DOE's efforts to reduce petroleum consumption.

ADDRESSES: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of FreedomCAR and Vehicle Technologies, EE-2G, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

FOR FURTHER INFORMATION CONTACT: Shabnam Fardanesh on (202) 586-7011 or shabnam.fardanesh@ee.doe.gov.

SUPPLEMENTARY INFORMATION: The Energy Policy Act of 1992 (42 U.S.C. 13211-13219) as amended by the Energy Conservation and Reauthorization Act of 1998 (Pub. L. 105-388, section 310(b)(3)(b)) and Executive Order 13149 (April 2000) were intended to decrease the country's dependence on petroleum for transportation purposes. The Energy Policy Act of 1992 requires Federal fleets to make 75 percent of their new covered vehicles acquisitions alternative fueled vehicles. In fiscal year 2001, DOE acquired 109 percent of its new covered vehicles as alternative fueled vehicles, exceeding the 75 percent requirement by 34 percent. DOE also exceeded its alternative fueled vehicle acquisition requirements in fiscal years 1999 and 2000, and expects a similarly high level of compliance for fiscal years 2002 and 2003.

Pursuant to 42 U.S.C. 13218, DOE and other covered agencies are required annually to submit to Congress reports on their alternative fueled vehicle acquisitions. These reports must also be placed on a publicly available Web site and their availability, including the Web site address, must be published in the **Federal Register**.

The DOE report for 2001 may be accessed on the Vehicle Technology's Federal Fleet Web site at http://www.ott.doe.gov/epact/fed_fleet_prog.shtml.

Issued in Washington, DC, on March 25, 2003.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 03-7478 Filed 3-27-03; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03-25-003, et al.]

New England Power Pool, et al.; Electric Rate and Corporate Filings

March 21, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New England Power Pool

[Docket No. EL03-25-003]

Take notice that on March 18, 2003, New England Power Pool (NEPOOL) Participants Committee tendered for filing with the Federal Energy Regulatory Commission (Commission) a supplement to its March 3, 2003 Report of Compliance.

The NEPOOL Participants Committee states that copies of this supplement were sent to all parties in Docket No. EL03-25, the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment Date: April 17, 2003.

2. Alliance Companies, et al. and National Grid USA

[Docket No. EL02-65-011]

Take notice that on March 18, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. jointly filed with the Federal Energy Regulatory Commission (Commission), for informational purposes, an implementation progress report in accordance with the Commission's July

31, 2002 order in the above-referenced docket, 100 FERC § 61,137. This is fourth in a series of similar filings to be made on or about every 60 days.

Comment Date: April 17, 2003.

3. SP Newsprint Co.

[Docket No. ER03-432-001]

Take notice that on March 17, 2003, SP Newsprint tendered for filing a Response and Revised Tariff that amends its January 15, 2003, application and addresses concerns raised by the Federal Energy Regulatory Commission (Commission) and Intervenor, Portland General Electric Company. SP Newsprint is requesting that the Commission waive the 60-day notice requirement and asks that the rates be made effective on, or before, April 19, 2003.

Comment Date: April 7, 2003.

4. PPM Energy, Inc.

[Docket No. ER03-478-002]

Take notice that on March 17, 2003, PPM Energy, Inc., (PPM), submitted for filing a revised market-based tariff (Tariff), with the Federal Energy Regulatory Commission (Commission), reflecting its name change from PacifiCorp Power Marketing, Inc., and other changes to conform to prior Commission orders. PPM requests waiver of the 60-day prior notice requirement to allow its revised Tariff to become effective as of January 15, 2003.

Comment Date: April 7, 2003.

5. Entergy Services, Inc.

[Docket No. ER03-599-001]

Take notice that on March 14, 2003, Entergy Services, Inc., (Entergy Services), submitted for filing on behalf of Entergy Arkansas, Inc., (EAI), certain corrections to the transmittal letter accompanying Entergy Services' filing of EAI's 2003 Wholesale Formula Rate Update. Entergy Services states that the corrections replace certain references to the year 2002 within the text of the transmittal letter with corrected references to the year 2003.

Comment Date: April 4, 2003.

6. Maine Public Service Company

[Docket No. ER03-627-000]

Take notice that on March 14, 2003, Maine Public Service Company (MPS), submitted an informational filing setting forth the changed loss factor effective March 1, 2003, together with back-up materials, pursuant to Section 2.7 of the Settlement Agreement filed on February 28, 2001, in Docket No. ER01-1344-000, and accepted by the Federal Energy Regulatory Commission on April 13, 2001.

MPS states that copies of this filing were served on the parties to the Settlement Agreement in Docket No. ER01-1344-000, the Northern Maine Independent System Administrator, Inc., the Maine Public Utilities Commission, Commission Trial Staff, the Maine Public Advocate, and current MPS open access transmission tariff customers.

Comment Date: April 4, 2003.

7. American Electric Power Service Corporation

[Docket No. ER03-628-000]

Take notice that on March 17, 2003, the American Electric Power Service Corporation (AEPSC) tendered for filing a Service Agreement under the AEP Companies Power Sales Tariffs (Tariffs). The Tariffs were accepted for filing effective October 10, 1997 and were designated as AEP Operating Companies FERC Electric Tariff Original Volume No. 5 (Wholesale Tariff of the AEP Operating Companies) and FERC Electric Tariff Original Volume No. 8, effective January 8, 1998 in Docket ER 98-542-000 (Market-Based Rate Power Sales Tariff of the CSW Operating Companies). AEPSC respectfully requests waiver of notice to permit the attached Service Agreement to be made effective on or prior to February 16, 2003.

AEPSC states that a copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: April 7, 2003.

8. Southern California Edison Company

[Docket No. ER03-629-000]

Take notice that on March 17, 2003, Southern California Edison Company (SCE) tendered for filing the Amended and Restated Service Agreement for Wholesale Distribution Service (Agreement) between SCE and SCEs Generation Business Unit. SCE states that the Agreement provides the terms and conditions under which SCE provides Distribution Service to SCEs Generation Business Unit under FERC Electric Tariff, First Revised Volume No. 5.

SCE also states that copies of this filing were served upon the Public Utilities Commission of the State of California and SCEs Generation Business Unit.

Comment Date: April 7, 2003.

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 "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659. 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.

Magalie R. Salas,
Secretary.

[FR Doc. 03-7416 Filed 3-27-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2142-031-Maine]

FPL Energy Maine Hydro, LLC; Notice of Availability of Environmental Assessment

March 21, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new major license for the Indian Pond Hydroelectric Project (P-2142-031), located on the Kennebec River in Somerset and Piscataquis counties, Maine, and has prepared an environmental assessment (EA) for the project. The EA contains the staff's analysis of the potential environmental impacts of the project and concludes

that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for public inspection in the Public Reference Room of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The EA may also be viewed on the Internet at <http://www.ferc.gov> using the "FERRIS" link—select "Docket #" and follow the instructions. For assistance, please contact FERC online support at FERCOnlineSupport@ferc.gov or call toll-free 866-208-3676 or (202) 502-8659 (for TTY).

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Indian Pond Project No. 2142-031" to all comments.

Comments may also 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.

For further information, contact John Costello at (202) 502-6119.

Magalie R. Salas,
Secretary.

[FR Doc. 03-7418 Filed 3-27-03; 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

March 21, 2003.

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.:* 12428-000.

c. *Date filed:* December 17, 2002, supplemented February 26, 2003.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Melvern Dam Hydroelectric Project would be located on the Marais Des Cygnes River in Osage County, Kansas. The project would utilize the U.S. Army

Corps of Engineers' existing Melvern Dam and Reservoir.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535-7115.

h. *FERC Contact:* James Hunter, (202) 502-6086.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

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.

j. *Description of Project:* The proposed project, using the Corps' existing Melvern Dam and Reservoir, would consist of: (1) An 80-foot-long, 114-inch-diameter steel penstock, (2) a powerhouse containing one generating unit with an installed capacity of 2.0 megawatts, (3) a 1,500-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 12 gigawatthours.

k. 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. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. *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.

m. *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.

n. *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.

o. *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.

p. *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.

q. *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", or "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 an original and eight copies 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.

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.

r. *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. 03-7417 Filed 3-27-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

March 21, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

- a. *Type of Application*: New license.
- b. *Project No.*: 2726-012.
- c. *Date filed*: July 29, 2002.
- d. *Applicant*: Idaho Power Company.
- e. *Name of Project*: Upper and Lower Malad Hydroelectric Project.
- f. *Location*: On the Malad River, in the Town of Hagerman, Gooding County, Idaho.
- g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Robert W. Stahman, Idaho Power Company, 1221 West Idaho Street, Boise, Idaho 83707, (208) 388-2676.

i. *FERC Contact*: John Blair, (202) 502-6092 or john.blair@FERC.gov.

j. *Deadline for filing motions to intervene and protests*: 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.

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

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link. The Commission encourages electronic filings.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *Description of the Project*: the project consists of (1) an upper diversion dam consisting of a gated spillway section 100 feet long and a flume section 123 long; (2) a concrete flume 4,635 feet long between the upper diversion dam and the upper intake structure; (3) the upper concrete intake structure 80.5 feet long and approximately 21 feet wide; (4) a steel penstock 10 feet in diameter and approximately 238 feet long connected to the upper powerhouse; (5) the upper reinforced concrete powerhouse containing one generating unit having an installed nameplate capacity of 8.27 megawatts; (6) a lower diversion dam consisting of a gated spillway section 163 feet long and a flume section 136 feet long; (7) a concrete flume 5,318 feet long between the lower diversion dam and the lower intake structure; (8) the lower concrete intake structure 85 feet long and approximately 23 feet wide; (9) a steel penstock 12 feet in diameter and approximately 301 feet long connected to the lower powerhouse; (10) the lower reinforced concrete powerhouse containing one generating unit having an installed capacity of 13.5 megawatts; and (11) other appurtenances.

m. A copy of the application 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, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 03-7419 Filed 3-27-03; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6638-7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements

Filed March 17, 2003 through March 21, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030119, Draft Supplement, AFS, MT, Threemile Stewardship Project, Proposed Short-Term and Long-Term Vegetation and Road Management Activities, Ashland Ranger District, Custer National Forest, Powder and Rosebud Counties, MT, Comment Period Ends: May 12, 2003, Contact: Elizabeth McFarland (406) 784-2344. This document is available on the Internet at: <http://www.fs.fed.us/rl/custer/>.

EIS No. 030120, Draft Supplement, AFS, UT, Long Deer Vegetation Management Project, To the South Spruce Ecosystem Rehabilitation Project, Implementation, Dixie National Forest, Cedar City Ranger District, Iron and Kane Counties, UT, Comment Period Ends: May 12, 2003, Contact: Phillip G. Eisenhower (435) 865-3200.

EIS No. 0230121, Draft EIS, COE, CA, East Cliff Drive Bluff Protection and Parkway Project, Evaluate Alternatives for Coastal Bluff Erosion Protection, City of Santa Cruz, Santa Cruz County, CA, Comment Period Ends: May 12, 2003, Contact: Sarah Cameron (415) 977-8538.

EIS No. 030122, Final EIS, FHW, CA, CA-78/111 Brawley Bypass, Construction of an Expressway from CA-86 to CA-11, City of Brawley, Funding, Imperial County, CA, Wait Period Ends: April 28, 2003, Contact: Jeff Lewis (916) 498-5035.

EIS No. 030123, Final Supplement, JUS, CA, Pinal County Private Detention Facility, Updated Information, Single Contract for 3,000 Beds Possible Sites (1) Undeveloped Parcel of Land in the City of Eloy and the Existing Central Arizona Detention Center Located in Florence, Pinal County, AZ, Wait Period Ends: April 28, 2003, Contact: Charles Coburn (202) 307-9045.

EIS No. 030124, Draft EIS, NPS, DC, Rock Creek Park and the Rock Creek and Potomac Parkway Project, General Management Plan, Implementation, Washington, DC, Comment Period Ends: May 12, 2003, Contact: Adrienna Coleman (202) 282-1063. This document is available on the Internet at: <http://www.nps.gov/rocr>.

EIS No. 030125, Draft EIS, TVA, TN, Rarity Pointe Commercial Recreation and Residential Development on Tellico Reservoir Project, Request for TVA's Land and Approval of Water Use Facilities, Tellico Reservoir, Loudon County, TN, Comment Period Ends: May 12, 2003, Contact: Richard Toennisson (865) 632-8517.

EIS No. 030126, Draft EIS, AFS, UT, Monticello and Blanding Municipal

Watershed Improvement Projects, Implementation, Manti-La Sal National Forest, Monticello Ranger District, San Juan County, UT, Comment Period Ends: May 12, 2003, Contact: Greg T. Montgomery (435) 587-2041.

EIS No. 030127, Draft EIS, BLM, WY, West Hay Creek Coal Lease Application, To Lease Federal Coal to the Buckskin Mine in Wyoming Powder River Basin, Campbell County, WY, Comment Period Ends: May 27, 2003, Contact: Patricia Karbs (307) 261-7600. This document is available on the Internet at: <http://www.wy.blm.gov/nepa/>.

EIS No. 030128, Draft EIS, NPS, AZ, Petrified Forest National Park General Management Plan Revision, Implementation, Navajo and Apache Counties, AZ, Comment Period Ends: May 30, 2003, Contact: Suzy Stutzman (303) 987-6671. This document is available on the Internet at: <http://planning.den.nps.gov/plans.cfm>.

EIS No. 030129, Draft EIS, FHW, ND, Liberty Memorial Bridge Replacement Project, Rehabilitate or Reconstruct Due to Poor and Deteriorating Structural, U.S. Coast Guard Permit and U.S. Army COE Section 10 and 404 Permits, Missouri River, Bismarck and Mandan, ND, Comment Period Ends: May 12, 2003, Contact: Mark Schrader Ext.111 (701) 250-4343.

EIS No. 030130, FINAL EIS, BLM, OR, Rogue National Wild and Scenic River Hellgate Recreation Area (Applegate River to Grave Creek) Management Plan, Implementation, Bedford District, Josephine County, OR, Wait Period Ends: April 28, 2003, Contact: Cori Cooper (541) 618-2428.

Amended Notices

EIS No. 030115, Draft EIS, FRC, CA, Pit 3, 4, 5 Hydroelectric Project, (FERC No. 233-081), Application for New License, Pit River, Shasta-Trinity National Forest, Shasta County, CA, Due: May 5, 2003, Contact: John Mudre (202) 502-8902. Revision of FR Notice Published on 3/21/2003: Correction to Document Status from Final to Draft.

Dated: March 25, 2003.

Joseph C. Montgomery,
Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03-7502 Filed 3-27-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**[ER-FRL-6638-8]****Environmental Impact Statements and Regulations; Availability of EPA Comments**

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D-AFS-D65025-PA Rating EC1, County Line—Fourmile Project, Management Direction as Outlined in the Allegheny National Forest Land and Resource Management Plan, Implementation, Bradford Ranger District, Warren and McKean Counties, PA.

Summary: EPA expressed environmental concerns with impacts from erosion and sedimentation of streams associated with road construction, harvesting and reforestation treatments in Alternatives 2, 4 and 5. EPA supports Alternative 3 as the preferred alternative and suggested instituting measures to ensure no sediment transport offsite during storm events prior to re-establishment of ground cover after harvesting and reforestation treatments.

ERP No. D-AFS-K65248-CA Rating EC2, North Fork Fire Salvage Project, Harvest Salvage, Merchantable Timber Volume Sale and Sierra National Forest Land and Resource Management Plan, Implementation, Bass Lake Ranger District, Madera County, CA.

Summary: EPA expressed environmental concerns with potential adverse impacts to water quality given the only action alternative does not address consistency with EPA approved water quality standards.

ERP No. D-AFS-K65417-CA Rating LO, Blue Fire Forest Recovery Project, Proposal to Move the Existing Condition Caused by the Blue Fire of 2001 Towards the Desired Condition, Modoc National Forest, Warner Mountain Ranger District, Lassen and Modoc Counties, CA.

Summary: EPA has no objections to the proposed action provided full funding for completion of the proposed

mitigation measures and monitoring described in the Draft EIS is provided.

ERP No. D-AFS-L65414-ID Rating EC2, Middle Little Salmon Vegetation Management Project, Timber Stands Current Condition Improvements, Payette National Forest, New Meadows Ranger District, Adam County, ID.

Summary: EPA expressed environmental concerns over the short term water quality and habitat impacts. EPA also expressed concerns over the need for additional information on road closure maintenance, enforcement and monitoring plans, and Tribal consultation and public participation.

ERP No. D-BIA-K60034-CA Rating EC2, Jamul Indian Village (Tribe) 101 Acre Fee-to-Trust Transfer and Casino Project, Implementation, San Diego County, CA.

Summary: EPA expressed environmental concerns regarding the project's potential impacts to ground water from effluent disposal and how Best Management Practices and mitigation would ensure compliance with EPA approved water quality standards. EPA also expressed concerns that the DEIS fully evaluated just one action alternative.

ERP No. D-COE-D11035-MD Rating LO, Aberdeen Proving Ground (APG) Project, Research and Development, Test and Evaluation Ordinance of Military Equipment and Personnel Training, Chesapeake Bay, Hartford, Baltimore, Kent and Cecil Counties, MD.

Summary: EPA had no objections to the proposed action. EPA requested more information as to how the EIS would be integrated into the decision-making process at the Aberdeen Proving Ground. EPA also requested clarification whether an EIS or EA is being prepared for the Range Management Plan.

ERP No. D-COE-D35060-PA Rating EO2, Alleghany and Ohio Rivers Commercial Sand and Gravel Dredging Operations, Granting and Extending Permits for Continuance of Dredging, and U.S. Army COE Section 10 and 404 Permits Issuance, PA.

Summary: EPA expressed environmental objections because the DEIS did not adequately assess the potentially significant environmental impacts of the applicant's preferred alternative or explore the full range of alternatives available to reduce the adverse environmental impacts associated with this project. EPA also commented on the lack of information regarding specific permit conditions that are being proposed to mitigate resource damage related to the applicant's preferred alternative.

ERP No. D-COE-E01014-FL Rating EC2, Ona Mine Project, Construction and Operation of a Surface Mine for the Recovery of Phosphate Rock, Hardee County, FL.

Summary: EPA expressed environmental concerns for long-term reductions of groundwater reducing surface flows in the Peace River, Charlotte County's principal source of drinking water.

ERP No. D-FHW-G40172-TX Rating LO, TX-121 Highway Construction, I-30 to Farm-to-Market 1187 (FM 1187) Road, Funding, USCG Section 9, U.S. Army COE Section 10 and 404 Permits Issuance, Fort Worth, Tarrant County, TX.

Summary: EPA has no objections to the selection of the preferred alignment. EPA appreciates the opportunity to have participated in the development of the FHWA draft EIS.

ERP No. D-FRC-J03015-00 Rating EC2, Grasslands Pipeline Project, Interstate Natural Gas Pipeline System Construction and Operation, Docket No. CP02-037-000, WY, ND and MT.

Summary: EPA's main environmental concerns relate to potentially adverse impacts from construction to: (1) Wetlands, (2) sediment in streams and other waters, (3) establishment and spread of noxious weeds and (4) wildlife habitat. Additional evaluation, disclosure, and mitigation were requested. Cumulative impacts are associated with the Grassland Pipeline, related to proposed plans to produce coalbed methane gas in the Powder River Basin of Wyoming and Montana.

ERP No. D-FTA-G59000-LA Rating LO, Desire Streetcar Line Project, Restoration of Streetcar Service along North Rampart Street/St. Claude Avenue between Canal Street and Poland Avenue, City of New Orleans, LA.

Summary: EPA has no objections to the selection of the preferred alternative. EPA recommends additional air quality information to further strengthen the Final EIS.

ERP No. D-IBR-L39059-WA Rating NS, Banks Lake Drawdown Project, Proposal to Lower the Water Surface Elevation from 1565 feet to 1560 feet in August of Each Year, Columbia River, Douglas and Grant Counties, WA.

Summary: EPA used a screening tool to conduct a limited review of the draft EIS. Based on the screen, EPA does not foresee having any objections to the proposed project.

Therefore, EPA did not conduct a detailed review of the draft EIS.

ERP No. D-STB-G53008-TX Rating LO, Bayport Loop New Rail Line, Construction and Operation, Finance

Docket No. 34079, Houston, Harris County, TX.

Summary: EPA has no objection to the selection of the preferred alternative.

ERP No. DA-FTA-L40205-00 Rating EC2, South Corridor Project a Portion of the South/North Corridor Project, Improvement to the Existing Urban Transportation System, Updated and Additional Information, Clackamas and Multnomah Counties, OR.

Summary: EPA has environmental concerns regarding aquatic resources, threatened and endangered species, community accessibility and potential construction impacts on hazardous waste sites.

ERP No DS-FTA-D40289-VA Rating LO, Norfolk Light Rail Transit Project, 8-Mile Light Rail Transit System Construction from the Western Terminus near Eastern Virginia Medical Center to an Eastern Terminus on Kempsville Road, City of Norfolk, VA.

Summary: EPA lacks objection to the project as proposed but recommends the HRT work with the Norfolk District Corps of Engineers to reduce further the 1.4 acres of wetland impacts during the design phase of the project.

Final EISs

ERP No. F-FHW-E40772-AL, Industrial Parkway Connector Project, Transportation Improvement, Lott Road/AL-217 to U.S. 45, Funding, U.S. Army COE Section 404 Permit and NPDES Permit Issuance, Mobile County, AL.

Summary: EPA continues to express environmental concern for impacts to wetlands and believes the document lacks sufficient information regarding the proposed wetlands mitigation site.

ERP No. F-FHW-F40406-00, Ironton-Russell Bridge Replacement Project, Structurally-Deficient and Functionally-Obsolete Bridge Replacement, Funding, NPDES, U.S. Coast Guard Section 9 Bridge Permits and U.S. Army COE Section 10 and 404 Permits Issuance, Lawrence County, OH and Greenup County, KY.

Summary: EPA has no outstanding environmental concerns and lacks objection to the project as proposed in the Final EIS.

ERP No. F-FHW-F54013-00, Chicago—St. Louis High-Speed Rail Project, Chicago to St. Louis Improvements to Enhance the Passenger Transportation Network, NPDES Permit and COE Section 404 Permit, Cook, Will, Kankakee Grundy, Livingston, McLean, Sangemon, Macoupin, Jersey, Madison and St. Louis Counties, IL and St. Louis County, MO.

Summary: EPA has no significant environmental concerns with the proposed action. The concerns

previously raised by EPA are not applicable to the preferred alternative selected in the Final EIS.

ERP No. F-FHW-H40174-IA, Avenue G Viaduct and Connecting Corridor, Access Improvement for Local Emergency Services and Safety Through Expanded Capacity across the Trail Corridor, Funding and NPDES Permit, Pottawattamie County, IA.

Summary: EPA lacks objection to the project as proposed in the final EIS but recommends a thorough asbestos inspection for properties to be demolished.

ERP No. F-FHW-L40199-WA, WA-509 Extension/South Access Road Corridor Construction Project, Funding and Possible US Army COE Section 404 Permit, Cities of SeaTac, Des Moines, Kent and Federal Way, King County, WA.

Summary: EPA has environmental concerns with the proposed project, specifically issues related to induced growth and potential impairment of air quality. The final EIS does not adequately discuss indirect and cumulative effects associated with the proposed project.

ERP No. F-FSA-A65173-00, Programmatic EIS—Emergency Conservation Program (ECP), Improvement and Expansion Plan, Emergency Funding to Farmers and Ranchers, Agricultural Lands of the United States.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F-FTA-E54011-FL, Tampa Rail Transportation Improvements Project, Light Rail Transit (LRT) or Diesel Multiple Unit (DMU) Vehicles, City of Tampa, Hillsborough County, FL.

Summary: EPA lacks objections to the project as described in the final EIS. EPA's previous concerns regarding the preferred alternative have been addressed.

ERP No. FS-COE-L32010-00, Columbia River Channel Improvement Project, Additional Information to Update the Disposal Plan and the Project Economics Plan, Columbia and Lower Willamette River Federal Navigation Channel, OR.

Summary: No formal comment letter was sent to the preparing agency.

Dated: March 25, 2003.

Joseph C. Montgomery,
Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03-7503 Filed 3-27-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7474-9]

Notice of Availability for FY 03 Enforcement and Compliance Assurance Multi-Media Assistance Agreements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Compliance (OC), within EPA's Office of Enforcement and Compliance Assurance (OECA), is soliciting proposals for a Environmental Compliance Grant program assistance for States and tribes in two focus areas: environmental enforcement training and supporting improved linkages between EPA and State/tribal systems. Grants will be in the range of \$50,000-\$200,000. The total number and amount of the awards will depend on the amount of funds made available.

DATES: Pre-proposals should not exceed 5 pages. (12 point font, on 8½ by 11 inch paper.) Pre-proposals must be received electronically or hard copy by May 5, 2003. Funding decisions will be made by late June based on the pre-proposals. Applicants selected to receive funds will be required to submit final proposals to the appropriate EPA Region by September 15, 2003.

ADDRESSES: Copies of Pre-proposals should be sent to David Piantanida (2222A), U.S. EPA—Ariel Rios South Rm 6149D, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, e-mail: piantanida.david@epa.gov, Tel: (202) 564-8318, Fax: (202) 564-0034; and simultaneously to the appropriate Regional Enforcement Coordinator. This document will be posted on the EPA's Office of Enforcement and Compliance Assurance Web site at <http://www.epa.gov/compliance/planning/state/grants.html>.

FOR FURTHER INFORMATION CONTACT: David Piantanida at (202) 564-8318.

SUPPLEMENTARY INFORMATION:

Eligibility and Authority

The funds available are from OECA's Multi-Media State and Tribal Assistance Grants (STAG) appropriation. Eligible applicants include States, tribes, inter-tribal consortia, territories, local governments, and multi-jurisdictional organizations. Where a lead State environmental agency exists, applicants should work with and coordinate through the lead State environmental agency.

EPA expects to award these grants under the following grant authorities: Clean Water Act, section 104; Federal Insecticide, Fungicide, and Rodenticide Act, section 20; Clean Air Act, section 103; Solid Waste Disposal Act, section 8001; Safe Drinking Water Act, section 1442 (c); Toxic Substances Control Act, section 10; Marine Protection, Research and Sanctuaries Act, section 203; Comprehensive Environmental Response, Compensation and Liability Act, section 311; National Environmental Policy Act, section 102(2)(F) for international awards; and Indian Environmental General Assistance Program Act. The applicable grant regulations for this grant program are in 40 CFR part 31 for State and local governments and Indian tribes.

Authority to enter into assistance agreements for the purposes described in this notice are delegated to OECA in EPA Delegation 1–47, Assistance Agreements for Economic, Social Science, Statistical, and Other Research, Development, Studies, Surveys, Demonstrations, Investigations, Public Education Programs, Training, and Fellowships.

Funding priorities must be allowable under 66.709 (Capacity Building Grants and Cooperative Agreements for States and Tribes) of the *Catalog of Federal Domestic Assistance* (CFDA).

Desired Projects

OECA will only consider funding projects for the two focus areas described below, and for projects which can be completed in 3 years or less. Projects will be evaluated for potential funding based on the extent to which they address the information below. Please note, applicants should not address both focus areas in their pre-proposals. Each focus area is separate and proposals from each category will be evaluated independently.

Table of Contents

1. Environmental Enforcement Training
2. Support Improved Linkages Between EPA and State/Tribal Systems:
 - (A) Permit Compliance System (PCS) Modernization
 - (B) Air Facility System (AFS)—Universal Interface (UI)

1. Environmental Enforcement Training

OECA's Office of Compliance is seeking ways to improve and build capacity among State and tribal personnel in the area of environmental enforcement training. We are looking for States/tribes or organizations to host training workshops or sponsor State and tribal personnel attendance at existing training programs (e.g., inspector, case developer).

Since EPA has discretionary authority to ask States and tribes to conduct inspections on behalf of the Agency under each Federal environmental statute, strengthening enforcement skills through training is important. To ensure that State, local and tribal environmental personnel conduct and perform specific responsibilities appropriately, OECA will consider funding pre-proposals that fall into the following training areas:

- Inspector training and inspector training involving cross-training with other specialties—including cross-media, and criminal investigation,
- Single and multi-media enforcement for case developers,
- Basic and multi-media inspector/compliance training; and,
- Environmental benefits of enforcement cases.

Pre-proposal Criteria: All training pre-proposals will be evaluated and ranked based on the criteria outlined below. The following seven criteria and associated points will be used by EPA to evaluate the pre-proposals.

(a) (10 points) Clearly identify intended audience by identifying other States and tribes within an EPA region to host or participate in a workshop that includes training from the areas listed above.

(b) (10 points) Explicitly state and describe the training and verify that the particular training can accommodate the number of participants specified in the pre-proposal.

(c) (25 points) Description of course outline and content shows consistency with EPA Federal guidelines and is supportive of an authorized program (e.g., training provides information on Federal inspection law and policy). Course content may also provide information on inspection issues that arise under State and tribal laws.

(d) (10 points) Pre-proposals that include development of new training must show evidence that existing course materials will be used (e.g., EPA's NETI-West Basic Inspector Training Course materials). Funding should be used to revise/adapt existing training as much as possible and not used to duplicate training that is readily available from other sources.

(e) (10 points) All training funding pre-proposals must include payment of full travel and lodging costs for State and tribal training participants.

(f) (15 points) Address sharing results. Describe how you will share training materials and products (e.g., archive training materials on CD-ROM; make available on Web site; distribute training materials at conferences).

(g) (20 points) Identify output and outcome measures (i.e., identify number/type of personnel to be trained as well as describe how this training will improve skillfulness or job performance). Describe how success will be measured (e.g., use of questionnaires and surveys before and after training).

Applicants are encouraged to consult and utilize EPA's Guide to Compliance Assistance Outcome Measurement. This document is available at <http://es.epa.gov/oeca/perfmeas/full-oec.pdf>. If you do not have access to the Internet, you may request a hard copy by contacting David Piantanida on (202) 564–8318.

2. Support Improved Linkages Between EPA and State/Tribal Systems

It is critical that State or tribal data systems be able to report data to EPA that is consistent with EPA/State data standards and in line with new requirements of media data systems (e.g. Permit Compliance System) being modernized as well as consistent with current requirements of legacy media systems. OECA is making funds available to support the provision of quality data to EPA from States and/or tribes through improved system interfaces, data linkages, and data clean-up. States/tribes need to make sure their systems are compatible with EPA's systems and that they can accurately transmit data to EPA. The funds will allow the States/tribes to go out and procure the expertise they need in order to do that.

This notice also solicits projects that assist States/tribes with reporting of consistent streamlined environmental compliance data to EPA including the following:

(A) *Permit Compliance System (PCS) Modernization:* Grant funding would support State efforts to procure technical assistance and technical expertise for State system modifications to ensure the continued flow of nationally required National Pollutant Discharge Elimination System (NPDES) data from State systems to the PCS. This effort would ensure that States will be able to continue to meet delegation and regulatory reporting requirements to EPA. Areas of technical assistance may include: (1) Support for modification of existing State/tribal system interfaces or development of new State/tribal system interfaces to the new modernized system format (IDEF/XML format, revised flat file or batch card format), (2) support to develop capability of State/tribal systems to incorporate new data requirements for new NPDES programs (i.e., biosolids, CAFO, SSO/CSO, storm

water), and (3) data clean-up/data migration efforts.

(B) *Air Facility System (AFS) Universal Interface (UI)*: Grant funding would support State/tribal efforts to procure technical assistance to incorporate the AFS UI software with their current systems resulting in improved system interfaces, data linkages and data clean-up; and to support State/tribal efforts to build system capability to implement the air compliance monitoring strategy (CMS) data reporting requirements. To support the CMA, grant funding would assist States/tribes to streamline the capture and transmission of nationally required air compliance and enforcement data with special emphasis on reporting of the following data: (a) Stack tests and results; (b) compliance certification due, received, and reviewed dates; and (c) information on compliance certification deviations and certification review results.

Pre-proposal Criteria: All support pre-proposals will be evaluated and ranked based on the criteria outlined below. The following three criteria and associated points will be used by EPA to evaluate the pre-proposals:

(a) (20 points) The pre-proposal must describe briefly the existing State/tribal data system;

(b) (30 points) The pre-proposal must describe briefly the technical aspects of methods for currently exchanging nationally required NPDES and AFS data with EPA; and,

(c) (50 points) Pre-proposal must clearly identify and describe the States/tribes development efforts to support the modernized system formats (*i.e.*, revised IDEF/XML format, revised flat file or batch card format, or AFS UI interface software), to incorporate new data requirements for NPDES programs (*i.e.*, biosolids, CAFO, SSO/CSO, storm water) or the CMS data reporting requirements, and support for data clean-up, linkage, and migration efforts.

Past Performance

In addition to the above criteria, EPA will also be looking at past performance of a grantee under this grant program (*e.g.*, timely and complete quarterly/semi-annual reports, results/outcomes are apparent during the project, final reports are timely and complete). Where there are two pre-proposals that have been ranked equally, the one with a better track record will win based on their past performance. If a grantee should have no record under this program, they will not be unfairly penalized.

Funding

The grants/cooperative agreements should be in the range of \$50,000 to \$200,000, although proposals below or above that range will be considered. The total number and amount of the awards will depend on the amount of funds made available. The U.S. EPA reserves the right to make no awards under this solicitation.

State and tribal matching funds are not required. However, preference will be given to pre-proposals which also make a commitment of State or tribal resources towards the total project cost. This can be State or tribal personnel salary dedicated to the project, cash contribution to the project budget or other "in kind" contributions. The value of donated or "in-kind" services in the performance of a project should be considered in accordance with OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments." Lastly, Federal funds cannot generally be used to provide a match or cost-share for other Federal projects.

EPA can not predict that additional funds for these focus areas will be available in future years. Therefore, States and tribes should assume that these funds will be available on a one-time only basis and should not propose projects requiring annual funding.

Process and Schedule

Electronic pre-proposals must be received by EPA by May 2, 2003, and should follow the format below. Pre-proposals should be submitted simultaneously to the appropriate Regional Enforcement Coordinator, and to David Piantanida, OECA, (*see* Contact Information below.) Funding decisions will be made by late June 2003 based on the pre-proposals. Applicants selected to receive funds will be required to submit final proposals electronically by August 29, 2003. Regions will provide application materials to selected applicants.

FOIA, CBI, and Enforcement Screening: Applicants should be aware that pre-proposals submitted under this or any other EPA grant program are subject to the Freedom of Information Act (FOIA). This means that anyone can request and receive copies of all the information submitted in your grant proposal. If your application contains any Confidential Business Information (CBI), be sure to highlight it so the confidentiality can be protected in the event of a FOIA request.

Proposed Milestones for 2003 OECA Multi Media Assistance Agreements

May 5—Electronic Pre-Proposals due simultaneously to the appropriate EPA Regional Enforcement Coordinator, and David Piantanida, OECA. (*See* Contact Information below.)

Late June—EPA notifies all applicants via e-mail of funding decisions.

July 31—Selected recipients receive final application materials from EPA Regional office and name and contact information of Regional Project Officer and Regional Grants Contact.

September 15—Final Proposals/Work Plans due to Regional Project Officers and Regional Grants Contact, and David Piantanida, OECA.

September—Grants awarded.

Format for Pre-Proposals

Pre-proposals should not exceed 5 pages and follow the format below:

I. Project Information

State/Tribe and Department:

Title of Project:

Focus Area: (From Notice of Availability)

Total Funds Requested from EPA:

Total Project Cost: (*Including state/tribe cash and in-kind contributions*)

Contact Person: (Name, title, address, phone, fax, & email)

Preferred Assistance Agreement: (Grants or cooperative agreements)

II. Summary

—Summary of the problem being addressed;

—Summary of project goal(s);

—Summary of project components;

—Summary of how the project components will address the problem & attain the goals.

III. Summary Work Plan

—Proposed activities—List and describe activities and how they relate to the evaluation elements listed under Desired Projects above;

—Measures—How will the success of the project be measured? (*E.g.*, training—return on investment and number trained.) Include both output and outcome measures.

—Sharing results—How will the results of the project be shared across States/tribes? (*E.g.*, training—how will the archived materials be disseminated to other States/tribes?)

IV. Project Milestones

—List project milestones with estimated dates, including estimated duration of project.

V. Project Costs

—Include an itemized budget for all project costs—distinguish the funds

requested from any State/tribe contributions (in kind or other).

Reports

Awardees will be required to submit semi-annual and final progress reports to their project officer and to David Piantanida at the address below. A template reporting form will be provided to all funded grantees. Recipients will also be required to complete annual Financial Status Reports. All reports must be prepared in either Word or Wordperfect formats and delivered electronically to the appropriate project officer and to David Piantanida.

Contact Information

For more information regarding this process, please contact David Piantanida at the address below: David Piantanida (2222A), US EPA—Ariel Rios South Rm 6149D, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. piantanida.david@epa.gov. Tel: (202) 564-8318. Fax: (202) 564-0034.

EPA Regional Contacts

EPA Region I

Enforcement Coordinator: Ken Moraff—moraff.ken@epa.gov.
Enforcement Division Director: Sam Silverman—silverman.sam@epa.gov.

EPA Region II

Enforcement Coordinator: Barbara McGarry—mcgarry.barbara@epa.gov.
Enforcement Division Director: Richard Caspe—caspe.richard@epa.gov.

EPA Region III

Enforcement Coordinator: Samantha Fairchild—fairchild.samantha@epa.gov.

EPA Region IV

Enforcement Coordinators: Sherri Fields—fields.sherri@epa.gov. Bruce Miller—miller.bruce@epa.gov.
Enforcement Division Director: William Anderson—anderson.william@epa.gov.

EPA Region V

Enforcement Coordinator: Tinka Hyde—hyde.tinka@epa.gov.

EPA Region VI

Enforcement Coordinator: Walter Biggins—biggins.walter@epa.gov.
Enforcement Division Director: Samuel Coleman—coleman.samuel@epa.gov.

EPA Region VII

Enforcement Coordinator: Cecilia Tapia—tapia.cecilia@epa.gov.

EPA Region VIII

Enforcement Coordinator: Eddie Sierra—sierra.eddie@epa.gov.
Enforcement Division Director: Carol Rushin—rushin.carol@epa.gov.

EPA Region IX

Enforcement Coordinator: Jim Grove—grove.jim@epa.gov.

EPA Region X

Enforcement Coordinator: Lauris Davies—davies.lauris@epa.gov.

Dated: March 24, 2003.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 03-7509 Filed 3-27-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7474-5]

Draft Handbook for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is making available the draft *Handbook for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems* (referred to here as the Management Handbook) for public review and comment. The purpose of the Management Handbook is to develop a step-by-step guide for regulators and service providers to implement a voluntary management program for decentralized wastewater treatment systems. The Management Handbook supports EPA's *Voluntary Guidelines for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems* (referred to here as the Management Guidelines) published elsewhere in today's **Federal Register**.

DATES: Comments are requested by May 27, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in section I.B.

FOR FURTHER INFORMATION CONTACT: Any questions regarding the content of EPA's draft *Handbook for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems* can be addressed to Joyce Hudson by e-mail at hudson.joyce@epa.gov or via U.S. mail

to Joyce Hudson, U.S. EPA, Office of Wastewater Management (4204M), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies Of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW-2002-0017. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.A.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

3. **Hardcopy.** Copies of the document may also be obtained by downloading the document at <http://www.epa.gov/owm/mtb/decent/>, by calling the USEPA Publications Clearinghouse at 1-800-490-9198 or submitting a request by mail at USEPA Publications Clearinghouse, PO Box 42419, Cincinnati, OH 45242.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. **Electronically.** If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the

comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OW-2002-0017. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to ow-docket@epa.gov, Attention Docket ID No. OW-2002-0017. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. Email addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. **By Mail.** Send an original and 3 copies of your comments to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention: Docket ID No. OW-2002-0017.

3. **By Hand Delivery or Courier.** Deliver your comments to: EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention: Docket ID No. OW-2002-0017. Such deliveries are

only accepted during the Docket's normal hours of operation as identified in section I.A.1.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

Decentralized wastewater treatment systems (commonly referred to as septic systems, private sewage systems, individual sewage systems, onsite sewage disposal systems or package plants) include onsite and clustered systems used to collect, treat, and disperse or reclaim wastewater from individual dwellings or businesses, or small communities or service areas. State agencies report that some of these systems have failed because of inappropriate siting or design or inadequate long-term maintenance. Historically high failure rates in some areas indicate a need for better management of these systems to protect public health and water quality. However, when onsite and clustered wastewater treatment systems are properly managed, they may, in many cases, be the most practical and least expensive way to treat household wastewater. In response to the need for improved management, EPA is providing the Management Guidelines to establish a benchmark for effective management. The purpose of the Management Guidelines is to raise the level of performance of onsite and clustered wastewater treatment systems through improved management programs. The draft Management Handbook supports the Voluntary Management Guidelines by providing

details on assessing, developing, implementing, and sustaining a viable management program.

All aspects of a management program are covered, including public education and participation, planning, performance criteria, site evaluation, design, construction, operation and maintenance, residuals management, training and certification/licensing, inspections/monitoring, corrective actions, record keeping/reporting, and financial assistance. To address these elements of comprehensive management programs, the Management Handbook will include the following:

- Public awareness and education tools
- Case studies of management programs
- Options for inventories
- Funding examples
- Model codes and ordinances
- Examples of septage management

The primary audience for the Management Handbook are state, tribal and local regulators and community officials that are responsible for regulating onsite and clustered systems.

Onsite and clustered wastewater treatment systems currently serve about 25 percent of U.S. homes and approximately 33 percent of new development. The vast majority of these systems are conventional onsite wastewater treatment systems (septic systems). States report that these wastewater treatment systems have failed because of inappropriate siting or design or inadequate long-term maintenance and that septic tank systems constitute the third most common source of ground water contamination. Historically high failure rates in some areas indicate a need for better management of these systems to protect public health and water quality. When onsite and clustered wastewater treatment systems are properly managed, they may, in many cases, be the most practical and least expensive way to treat household wastewater.

In April, 1997, EPA prepared its "Response to Congress on the Use of Decentralized Wastewater Treatment Systems." The report concluded that decentralized wastewater treatment technologies offer a cost-effective, long term wastewater treatment solution for many communities. However, the report emphasized that decentralized technologies must be implemented in the context of a responsible management program to consistently achieve water quality and public health goals. The report identified the current lack of management as a barrier to successfully applying these otherwise promising technologies.

In response to the need for improved management, EPA prepared a concept paper in the spring of 1999, which received considerable input from various stakeholders, including other federal agencies, state health agencies, environmental groups, trade associations and public interest groups. Based on comments received, EPA developed the draft Management Guidelines which were published in October 2000, along with an annotated outline of this draft handbook. Comments were once again solicited, resulting in the final Management Guidelines and this draft Management Handbook.

Dated: March 18, 2003.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water.

[FR Doc. 03-7505 Filed 3-27-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7474-4]

Voluntary National Guidelines for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is making available the final *Voluntary National Guidelines for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems* (referred to here as the Management Guidelines). The purpose of the Management Guidelines is to improve the level of performance of decentralized wastewater treatment systems nationally through improved management programs. The Management Guidelines will help improve system performance by raising the quality of management programs, establishing minimum levels of activity, and institutionalizing the concept of management. Implementation of the Management Guidelines will also provide a greater range of options for cost-effectively meeting wastewater treatment needs and meeting water quality and public health goals. The primary audience for the Management Guidelines are state, tribal and local regulators and community officials that are responsible for regulating onsite and clustered systems.

FOR FURTHER INFORMATION CONTACT: Any questions regarding the content of the

Voluntary National Guidelines for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems can be addressed to Joyce Hudson by e-mail at hudson.joyce@epa.gov or via U.S. mail to Joyce Hudson, U.S. EPA, Office of Wastewater Management (4204M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Decentralized wastewater treatment systems (commonly referred to as septic systems, private sewage systems, individual sewage systems, onsite sewage disposal systems or package plants) include onsite and clustered systems used to collect, treat, and disperse or reclaim wastewater from individual dwellings, businesses, or small communities and service areas. State agencies report that some of these systems have failed because of inappropriate siting or design or inadequate long-term maintenance. Historically high failure rates in some areas indicate a need for better management of these systems to protect public health and water quality. However, when onsite and clustered wastewater treatment systems are properly managed, they may, in many cases, be the most practical and least expensive way to treat household wastewater. In response to the need for improved management programs, EPA has developed the Management Guidelines to establish a benchmark for effective management. The purpose of the Management Guidelines is to raise the level of performance of onsite and clustered wastewater treatment systems through improved management programs. The Management Guidelines will be supplemented with a handbook for state, tribal, and local governments to use in upgrading management programs. The draft *Handbook for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems* is being published elsewhere in today's **Federal Register** for public comment.

The Management Guidelines present a set of five model programs based on a comprehensive approach that relies on coordinating the responsibilities and actions among the state, tribal or local regulatory agency, the management entity or service provider and the system owner. The level of management needed increases as the sensitivity of the environment and/or the degree of technological complexity increases. A program's designation increases progressively from Model Program 1 through Model Program 5, reflecting the increased level of management activities

needed to achieve increasing water quality and public health goals.

Adoption of the Management Guidelines is voluntary, however, EPA encourages states and communities to consider them as a basis for improving their onsite and clustered wastewater management program.

The guidelines apply to both existing communities and to areas of new development that use onsite and clustered wastewater treatment systems of any size for residential and commercial wastewater treatment and dispersal.

Background. Onsite and clustered wastewater treatment systems currently serve about 25 percent of U.S. homes and approximately 33 percent of new development. States report that these wastewater treatment systems have failed because of inappropriate siting or design or inadequate long-term maintenance and that septic tank systems constitute the third most common source of ground water contamination.

In April, 1997, EPA prepared its *Response to Congress on the Use of Decentralized Wastewater Treatment Systems*. The report concluded that decentralized wastewater treatment technologies offer a cost-effective, long term wastewater solution for many communities. However, the report emphasized that decentralized technologies must be implemented in the context of a responsible management program to consistently achieve water quality and public health goals. The report identified the current lack of management as a barrier to successfully applying these otherwise promising technologies.

In response to the need for improved management, EPA prepared a concept paper in the spring of 1999, which received considerable input from various stakeholders, including other federal agencies, state health agencies, environmental groups, trade associations and public interest groups. The result was a notice of availability of the draft *Guidelines for Management of Onsite/Decentralized Wastewater Treatment Systems* which was published in the **Federal Register** on October 6, 2000 (65 FR 59840–59841) for public comment and included an annotated outline of an accompanying manual/handbook. During follow up outreach efforts conducted by EPA, stakeholders raised several key issues concerning the voluntary nature of the Guidelines, their flexibility, and possible implementation issues. EPA has addressed those issues and has received support from representatives of public and private organizations who

believe national guidelines are important.

You can get copies of the Management Guidelines by downloading the document at <http://www.epa.gov/owm/mtb/decent/>. Hard copies may be obtained from USEPA Publications Clearing House, PO Box 42419, Cincinnati, OH 45242. You may access this **Federal Register** notice electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

Dated: March 18, 2003.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water.

[FR Doc. 03–7506 Filed 3–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7474–8]

Proposed Administrative Cost Recovery Agreement under CERCLA Section 122(h) for Recovery of Past Costs at the Sealand Restoration Superfund Site, Lisbon, St. Lawrence County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement, entered into pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of past response costs concerning the Sealand Restoration Superfund Site (“Site”) located in Lisbon, St. Lawrence County, New York. The settlement is between the U.S. Environmental Protection Agency (“EPA”) and the General Motors Corporation (“GMC”). The settlement requires GMC to pay \$430,000.00 to EPA, in reimbursement of past response costs incurred with respect to the Site. The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), for all costs that EPA or the U.S. Department of Justice on behalf of EPA paid at or in connection with the Site through September 30, 2002. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or

withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA’s response to any comments received will be available for public inspection at the EPA, Region 2, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before April 28, 2003.

ADDRESSES: The proposed settlement is available for public inspection at the United States Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866. A copy of the proposed settlement may be obtained from James Doyle, Assistant Regional Counsel, Office of Regional Counsel, New York/Caribbean Superfund Branch, EPA, Region 2, 290 Broadway, 17th Floor, New York, New York 10007–1866. Comments should reference the Sealand Restoration Superfund Site located in Lisbon, St. Lawrence County, New York. Requests for a copy of the agreement should reference Docket No. CERCLA–02–2003–2007. Any comments or requests should be addressed to James Doyle at the above address.

FOR FURTHER INFORMATION CONTACT:

James Doyle, Assistant Regional Counsel, Office of Regional Counsel, New York/Caribbean Superfund Branch, EPA, Region 2, 290 Broadway, 17th Floor, New York, New York 10007–1866. Telephone: (212) 637–3165.

Dated: March 14, 2003.

William J. Muszynski,

Deputy Regional Administrator, United States Environmental Protection Agency, Region II.

[FR Doc. 03–7508 Filed 3–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL: 7474–7]

Proposed Covenant Not To Sue Under CERCLA Section 122(h) Contained in Administrative Order on Consent, Index No. CERCLA–02–2002–2025, Shenandoah Road Groundwater Contamination Superfund Site, East Fishkill, Dutchess County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42

U.S.C. 9622(i), notice is hereby given of a proposed covenant not to sue under section 122(h) of CERCLA, 42 U.S.C. 9622(h), contained in Administrative Order on Consent, Index No. CERCLA-02-2002-2025 ("Order"), that has been issued in connection with the Shenandoah Road Groundwater Contamination Superfund Site, East Fishkill, Dutchess County, New York ("Site"). The Order was issued on September 27, 2002, by the U.S. Environmental Protection Agency ("EPA" or the "Agency"). Under the Order, International Business Machines Corporation ("IBM") will conduct a remedial investigation and feasibility study ("RI/FS") for the Site and reimburse EPA for the costs of overseeing the work. Pursuant to Paragraph 75 of the Order, EPA is granting IBM a covenant not to sue for \$150,000 of EPA's past response costs. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the covenant not to sue. The Agency will consider all comments received and may modify or withdraw its consent to the covenant not to sue if comments received disclose facts or considerations that indicate that the proposed covenant not to sue is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA, Region II, 290 Broadway, New York, New York 10007-1866.

DATES: Comments must be submitted on or before April 28, 2003.

ADDRESSES: The Order containing the proposed covenant not to sue is available for public inspection at the United States Environmental Protection Agency, 290 Broadway, New York, New York 10007-1866. A copy of the Order containing the proposed covenant not to sue may also be obtained from Laura Y. McDavid, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, 17th Floor, 290 Broadway, New York, New York 10007-1866. Requests for a copy of the Order should reference Index No. CERCLA-02-2002-2025. Any comments or requests should be addressed to Ms. McDavid and should reference the Shenandoah Road Groundwater Contamination Superfund Site, East Fishkill, Dutchess County, New York.

FOR FURTHER INFORMATION CONTACT: Laura Y. McDavid, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New

York, New York 10007-1866.
Telephone: 212-637-3179.

Dated: March 19, 2003.

William J. Muszynski, P.E.,
Deputy Regional Administrator, U.S. Environmental Protection Agency, Region II.
[FR Doc. 03-7507 Filed 3-27-03; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-03-50-B (Auction No. 50); DA 03-372]

Narrowband PCS Spectrum Auction Revised Inventory and Start Date for Auction No. 50; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures, minimum opening bids, and revised inventory and start date for the upcoming auction of narrowband PCS licenses. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 50 is scheduled to begin on September 24, 2003.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Christopher M. Shields, Legal Branch, or Jeff Crooks, Auctions Operations Branch, at (202) 418-0660; Lisa Stover, Auctions Operations Branch, at (717) 338-2888, Media Contact: Lauren Kravetz at (202) 418-7944, Commercial Wireless Division: Policy and Rules Branch, Amal Abdallah at (202) 418-7307 or Evan Baranoff at (202) 418-7142; Licensing and Technical Analysis Branch, JoAnn Epps or Dwain Livingston, at (202) 418-0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 50 Procedures Public Notice* released on February 7, 2003. The complete text of the *Auction No. 50 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. *The Auction No. 50 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402,

Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com. This document is also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/50/>.

I. General Information

A. Introduction

1. By the *Auction No. 50 Procedures Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for the upcoming Narrowband PCS Spectrum Auction (Auction No. 50). The Bureau also announces a new date for the start of Auction 50 and a revised license inventory.

2. On November 26, 2002, in accordance with the Balanced Budget Act of 1997, the Bureau released a public notice seeking comment on reserve prices or minimum opening bids and auction procedures to be used in the Narrowband PCS Spectrum Auction (Auction No. 50). The *Auction No. 50 Comment Public Notice*, 67 FR 72417 (December 5, 2002), announced that Auction No. 50 would include regional and MTA licenses. The Bureau received one comment in response to the *Auction No. 50 Comment Public Notice*. No reply comments were submitted.

3. Space Data proposed that the Commission adopt a combinatorial bidding scheme for Auction No. 50. Space Data contends that the regional licenses are uniquely complementary, because in combination, they effectively constitute a nationwide license and will be more highly valued as a combined package by prospective auction participants intending to deploy nationwide service.

4. After consideration of Space Data's comments, the Bureau has concluded that it may be appropriate to use package bidding for the auction of the regional licenses. Accordingly, by this public notice the Commission:

i. Revises the license inventory for Auction No. 50 by removing the regional narrowband PCS licenses from Auction No. 50. Auction No. 50 will include only the MTA licenses.

ii. Revises the starting date for Auction No. 50, which will commence on September 24, 2003.

5. The Bureau notes that the regional narrowband PCS licenses will be included in Auction No. 51. It will announce the dates for Auction No. 51 and seek comment on a package bidding auction design and other auction procedures in a public notice.

i. Background of Proceeding

6. In the *PCS First Report and Order*, 58 FR 42681 (August 11, 1993), the Commission provided for the operation of narrowband PCS in three one-megahertz blocks in the 900 MHz band. The Commission broadly defined PCS as mobile and fixed communications offerings that serve individuals and businesses and that can be integrated with a variety of competing networks. The Commission also adopted a spectrum allocation and channelization plan, licensing rules, and technical standards for narrowband PCS. In the *Competitive Bidding Second Report and Order*, 59 FR 22980 (May 4, 1994), the Commission determined that, pursuant to section 309(j) of the Communications Act of 1934, as amended, PCS is subject to competitive bidding in the case of mutually exclusive applications. In the *Competitive Bidding Third Report and Order*, 59 FR 26741 (May 24, 1994) the Commission established competitive bidding rules specifically for narrowband PCS.

7. Subsequently, in the *Narrowband Second Report and Order and Second Further Notice of Proposed Rule*

Making, 65 FR 35843 (June 6, 2000), the Commission adopted modifications to its service rules for narrowband PCS. Specifically, the Commission: (i) Adopted Major Trading Areas (“MTAs”) for future licensing of narrowband PCS; (ii) eliminated the restriction, which only applied to 100 kilohertz of the 3 megahertz blocks allocated for narrowband PCS, that limited eligibility for acquiring narrowband PCS response channels to existing paging licensees; (iii) modified the construction and minimum coverage requirement for narrowband PCS spectrum by allowing licensees to meet a “substantial service” alternative; (iv) adopted Subpart Q of Part 1 of the Commission rules to apply to narrowband PCS; and (v) eliminated the narrowband PCS spectrum aggregation limit, finding that it is not necessary to prevent an undue concentration of licenses. In the *Third Narrowband Report and Order and Order on Reconsideration*, 66 FR 29911 (June 4, 2001), the Commission modified its channel band plan to allow for the licensing of narrowband PCS spectrum for eight additional nationwide licenses and seven licenses in each of the 51 MTAs. Further, the

Commission channelized and licensed the one megahertz of narrowband spectrum that had been held in reserve and re-channelized 712 kilohertz of previously channelized spectrum for which licenses had not been auctioned. With that action, the Commission resolved the remaining issues concerning narrowband PCS in preparation for auctioning licenses for the remaining narrowband PCS spectrum. In 2001, the Commission conducted an auction of nationwide and MTA narrowband PCS licenses in Auction No. 41.

ii. Licenses to Be Auctioned

8. The licenses available in Auction No. 50 will include 48 Major Trading Area (MTA) Personal Communications Service (PCS) licenses. The spectrum to be auctioned remains unsold from Auction No. 41, which closed on October 16, 2001. A complete list of licenses available for Auction No. 50 is included as Attachment A of the *Auction No. 50 Procedures Public Notice*.

9. The following table describes the licenses that will be auctioned:

Channel number	Channel description	Frequency bands	Bandwidth (kHz)
MTA Licenses			
26	One 50 kHz unpaired channel	901.35–901.40 MHz	50
27	One 50 kHz unpaired channel	901.40–901.45 MHz	50
29	One 50 kHz/50 kHz paired channel	901.95–902.00, 930.80–930.85 MHz	100
30	One 50 kHz/100 kHz paired channel	901.65–901.70, 930.30–930.40 MHz	150
31	One 50 kHz/150 kHz paired channel	901.70–901.75, 930.85–931.00 MHz	200
32	One 12.5 kHz/100 kHz paired channel	901.8375–901.8500, 940.9–941.0 MHz	112.5
MTA Subtotal .....	.....	.....	662.5
kHz			

(Note: For Auction No. 50, licenses are not available for every channel number listed in the table in every market. See Attachment A of the *Auction No. 50 Procedures Public Notice* to determine which licenses will be offered.)

B. Rules and Disclaimers

i. Relevant Authority

10. Prospective bidders must familiarize themselves thoroughly with the Commission’s rules relating to the narrowband services, contained in title 47, part 24 and part 90 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations.

11. Prospective bidders must also be thoroughly familiar with the

procedures, terms and conditions (collectively, “terms”) contained in the *Auction No. 50 Procedures Public Notice*; the *Auction No. 50 Comment Public Notice*; the *Part 1 Fifth Report and Order*, 65 FR 52401 (August 29, 2000), (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures); the *Narrowband PCS R&O/Further Notice*; 62 FR 27507 (May 20, 1997), the *Narrowband Second Report and Order and Second Further Notice of Proposed Rulemaking*; and the *Third Narrowband Report and Order and Order on Reconsideration*.

12. The terms contained in the Commission’s rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and

will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554 or may be purchased from the Commission’s duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or

via e-mail qualexint@aol.com. When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 01-135 for the *Third Narrowband Report and Order and Order on Reconsideration*).

ii. Prohibition of Collusion

13. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Bidders competing for licenses in the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

14. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering the same geographic areas. However, all applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for

licenses covering the same geographic areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

15. In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, §§ 1.65 and 1.2105 require an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

16. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G of the *Auction No. 50 Procedures Public Notice*.

iii. Due Diligence

17. Potential bidders seeking licenses for MTAs that border Canada or Mexico will be subject to on-going coordination arrangements with those respective countries. Potential bidders are also subject to the Interim Sharing Arrangement with Canada for the Bands 901-902 MHz, 930-931 MHz, and 940-941 MHz and to any restrictions that arise from future agreements with Canada or Mexico.

18. Potential bidders also should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA") waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensee licenses. In addition, certain judicial proceedings that may relate to particular applicants or incumbent licensees or the licenses available in Auction No. 50 may be commenced, may be pending, or may be subject to further review. The Bureau notes that resolution of these matters could have an impact on the availability of spectrum in Auction No. 50. Some of these matters (whether before the Commission or the courts) may not be resolved by the time of the auction.

19. Potential bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid

on, otherwise acquire, or make use of licenses available in Auction No. 50.

20. Potential bidders may obtain information about licenses available in Auction No. 50 through the Bureau's licensing databases on the World Wide Web at <http://wireless.fcc.gov/uls>. Potential bidders should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414-1250 (voice) or (202) 414-1255 (TTY), or via e-mail at ulscomm@fcc.gov. The hotline is available to assist with questions Monday through Friday, from 8 AM to 6 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded*. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to physically inspect any sites located in, or near, the MTA for which they plan to bid.

iv. Bidder Alerts

21. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

22. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

23. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may

attempt to use Auction No. 50 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

24. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific

deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals regarding Auction No. 50 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

v. National Environmental Policy Act ("NEPA") Requirements

25. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features.

The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

26. The auction will begin on Wednesday, September 24, 2003. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

27. Auction No. 50—Narrowband PCS.

iii. Bidding Methodology

28. The bidding methodology for Auction No. 50 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

29. The following is a list of important dates related to Auction No. 50:

Auction Seminar	July 30, 2003
Short-Form Application (FCC FORM 175)	August 8, 2003; 6 p.m. e.t.
Upfront Payments (via wire transfer)	August 26, 2003; 6 p.m. e.t.
Mock Auction	September 19, 2003
Auction Begins	September 24, 2003

v. Requirements for Participation

30. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. e.t., August 8, 2003.

- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. e.t., August 26, 2003.
- Comply with all provisions outlined in the *Auction No. 50 Procedures Public Notice*.

vi. General Contact Information

31. The following is a list of general contact information relating to Auction No. 50.

General Auction Information:	FCC Auctions Hotline, (888) 225-5322, Press Option #2, or direct (717) 338-2888, Hours of service: 8 a.m.-5:30 p.m. ET.
General Auction Questions	
Seminar Registration	
Auction Legal Information:	Auctions and Industry Analysis Division, Legal Branch (202) 418-0660.
Auction Rules, Policies, Regulations	
Licensing Information:	Commercial Wireless Division, (202) 418-0620.
Rules, Policies, Regulations	
Licensing Issues	
Due Diligence	
Incumbency Issues	
Technical Support:	FCC Auctions Technical Support Hotline, (202) 414-1250 (Voice), (202) 414-1255 (TTY), Hours of service: Monday through Friday 8 a.m. to 6 p.m. E.T.
Electronic Filing	
Automated Auction System	
Payment Information:	FCC Auctions Accounting Branch, (202) 418-0578 or (202) 418-0496, (202) 418-2843 (Fax).
Wire Transfers	
Refunds	
Telephonic Bidding	Will be furnished only to qualified bidders.

FCC Copy Contractor: Additional Copies of Commission Documents	Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 863-2893, (202) 863-2898 (Fax), qualexint@aol.com (E-mail).
Press Information	Lauren Kravetz (202) 418-7944.
FCC Forms	(800) 418-3676 (outside Washington, DC), (202) 418-3676 (in the Washington Area), http://www.fcc.gov/formpage.html .
FCC Internet Sites	http://www.fcc.gov , http://wireless.fcc.gov/auctions http://wireless.fcc.gov/uls .

II. Short-Form (FCC Form 175) Application Requirements

32. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 50 Procedures Public Notice*. The short-form application seeks the applicant's name and address, legal classification, status, small or very small business bidding credit eligibility, identification of the license(s) sought, the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed in section II.E (Provisions Regarding Defaulters and Former Defaulters), that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

A. License Selection

33. In Auction No. 50, Form 175 will include a mechanism that allows an applicant to create customized lists of licenses. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may apply for all the licenses in the customized list by using the "Save all filtered licenses" option; select and save individual licenses separately from the list; or create a second customized list without selecting any of the licenses from the first list. Applicants also will be able to select licenses from one customized list and then create a second customized list to select additional licenses.

B. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

34. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to file an "Exhibit A" providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for

the short-form are set forth in § 1.2112 of the Commission's rules.

C. Consortia and Joint Bidding Arrangements (FCC Form 175 (Exhibit B))

35. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. As discussed, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants for the same geographic license area(s) after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an "Exhibit B" to the FCC Form 175.

36. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations

among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

D. Eligibility

i. Bidding Credit Eligibility (FCC Form 175 Exhibit C)

37. In the *Narrowband Second Report and Order and Second Further Notice of Proposed Rule Making*, the Commission adopted bidding credits to promote and facilitate the participation of small businesses in the competitive bidding for licenses in the narrowband PCS service.

38. Bidding credits are available to small and very small businesses, or consortia thereof, (as defined in 47 CFR 1.2110(c)). A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests:

- A bidder with attributed average annual gross revenues of not more than \$40 million for the preceding three years receives a 15 percent discount on its winning bids for narrowband PCS licenses;
- A bidder with attributed average annual gross revenues of not more than \$15 million for the preceding three years receives a 25 percent discount on its winning bids for narrowband PCS licenses.

39. Bidding credits are not cumulative. A qualifying applicant receives either the 15 percent or 25 percent bidding credit on its winning bid, but not both.

ii. Tribal Land Bidding Credit

40. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. See section V.D. of the *Auction No. 50 Procedures Public Notice*.

iii. Applicability of Part 1 Attribution Rules

41. *Controlling interest standard.* On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*, in which the Commission, *inter alia*, adopted a “controlling interest” standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission observed that the rule modifications adopted in the various Part 1 orders would result in discrepancies and/or redundancies between certain of the new Part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the Part 1 proceeding. Part 1 rules that superseded inconsistent service-specific rules will control in Auction No. 50. Accordingly, the “controlling interest” standard as set forth in the part 1 rules will be in effect for Auction No. 50.

42. *Control.* The term “control” includes both *de facto* and *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity’s voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control:

- the entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- the entity plays an integral role in management decisions.

43. *Attribution for small and very small business eligibility.* In determining which entities qualify as small or very small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

44. A consortium of small or very small businesses is a “conglomerate organization formed as a joint venture between or among mutually independent business firms,” each of

which *individually* must satisfy the definition of small or very small business in § 1.2110(f). Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. The Bureau notes that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

iv. Supporting Documentation

45. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as small or very small businesses (or consortia of small or very small businesses) for this auction.

46. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form’s instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

47. *Small or very small business eligibility (Exhibit C).* Entities applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (i) The applicant, (ii) its affiliates, (iii) its controlling interests, and (iv) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of small or very small

businesses, this information must be provided for each consortium member.

E. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

48. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interests have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110 of the Commission’s rules (as amended in the *Part 1 Fifth Report and Order*). Applicants must include this statement as Exhibit D of the FCC Form 175. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

49. “Former defaulters”—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 50, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.3, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

F. Installment Payments

50. Installment payment plans will not be available in Auction No. 50.

G. Other Information (FCC Form 175 Exhibits E and F)

51. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the

participation of “designated entities” in its auctions. Applicants wishing to submit additional information may do so, on Exhibit F (Miscellaneous Information) to the FCC Form 175.

H. Minor Modifications to Short-Form Applications (FCC Form 175)

52. After the short-form filing deadline (August 8, 2003), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections or proposed service areas, change the certifying official, change control of the applicant or change bidding credits). See 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants must make these modifications to their FCC Form 175 electronically and should submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: auction50@fcc.gov. The electronic mail summarizing the changes should include a subject or caption referring to Auction No. 50. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

53. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850. Questions about other changes should be directed to Christopher Shields of the Auctions and Industry Analysis Division at (202) 418-0660.

I. Maintaining Current Information in Short-Form Applications (FCC Form 175)

54. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

55. On Wednesday, July 30, 2003, the FCC will sponsor a free seminar for Auction No. 50 at the Federal Communications Commission, located

at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC Automated Auction System, and the narrowband PCS and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

56. To register complete the registration form found in Attachment B of the *Auction No. 50 Procedures Public Notice* and submit it by Monday, July 28, 2003. Registrations are accepted on a first-come, first-served basis.

B. Short-Form Application (FCC Form 175)—Due August 8, 2003

57. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. e.t. on August 8, 2003. Late applications will not be accepted.

58. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. See section III.D.

i. Electronic Filing

59. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon e.t. on July 30, 2003, until 6 p.m. e.t. on August 8, 2003. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on August 8, 2003.

60. Applicants must press the “SUBMIT Application” button on the “Submission” page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the *Auction No. 50 Procedures Public Notice*. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); hours of service Monday through Friday, from 8 a.m. to 6 p.m. e.t. In order to provide better service to the public, *all calls to the hotline are recorded*.

61. Applicants can also contact Technical Support via e-mail. To obtain the address, click the Support tab on the Form 175 Homepage.

ii. Completion of the FCC Form 175

62. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 50 Procedures Public Notice*. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D of the *Auction No. 50 Procedures Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

63. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications.

Note: Applicants should not include sensitive information (i.e., TIN/EIN) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. See Attachment C of the Auction No. 50 Procedures Public Notice for details on accessing the review system.

C. Application Processing and Minor Corrections

64. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

65. As described more fully in the Commission's rules, after the August 8, 2003, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

D. Upfront Payments—Due August 26, 2003

66. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159

that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. e.t. on August 26, 2003.

67. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.

• Upfront payments for Auction No. 50 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.

- Failure to deliver the upfront payment by the August 26, 2003, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

68. Wire transfer payments must be received by 6 p.m. e.t. on August 26, 2003. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information: ABA Routing Number: 043000261, Receiving Bank: Mellon Pittsburgh, BENEFICIARY (BNF): FCC/Account # 910-1174, OBI Field: (Skip one space between each information item), "AUCTIONPAY", FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 11 and/or 21), PAYMENT TYPE CODE (same as FCC Form 159, block 24A: A50U), FCC CODE 1 (same as FCC Form 159, block 28A: "50"), PAYER NAME (same as FCC Form 159, block 2), LOCKBOX NO. # 358405.

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

69. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209-6045 at least one hour

before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 50." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

70. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 50 Procedures Public Notice*. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

71. In the *Part 1 Order*, 62 FR 13540 (March 21, 1997), the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that "former defaulters," i.e., applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-"former defaulters." For purposes of this calculation, the "applicant" includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*).

72. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed that the amount of the upfront payments would determine the number of bidding units on which a bidder may place bids. In order to bid on a license, otherwise

qualified bidders that applied for that license on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

73. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed upfront payments on a license-by-license basis using the following formula:

$\$.00001 * \text{kHz} * \text{License Area Population with a minimum of } \500 per license.

74. The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposed upfront payments. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 50 Procedures Public Notice*.

75. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to be active (bidding units associated with licenses on which the bidder has the standing high bid from the previous round and licenses on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

EXAMPLE: UPFRONT PAYMENTS AND BIDDING FLEXIBILITY

Market No.	Ch. No.	Market name	Population	Bidding units	Upfront payment
MTA003	31	Chicago	13,220,193	26,000	\$26,000
MTA005	31	Detroit	10,658,459	21,000	\$21,000

If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 47,000 bidding units (26,000 + 21,000). If a bidder only wishes to bid on one, but not both, purchasing 26,000 bidding units would meet the requirement for either license. The bidder would be able to bid on either license, *but not both at the same time*. If the bidder purchased only 21,000 bidding units, it would have enough eligibility for the Detroit license but not for the Chicago.

76. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

77. An applicant may, on its FCC Form 175, apply for every applicable license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

78. The Commission will use wire transfers for all Auction No. 50 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418-2843 by August 26, 2003. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578 or Tim Dates at (202) 418-0496.

Name of Bank

ABA Number

Contact and Phone Number

Account Number to Credit

Name of Account Holder

FCC Registration Number (FRN)

Taxpayer Identification Number

Correspondent Bank (if applicable)

ABA Number

Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in section V.F.

E. Auction Registration

79. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted

upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

80. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

81. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, September 17, 2003, should contact the Auctions Hotline at (717) 338-2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

82. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Remote Electronic Bidding

83. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid electronically or telephonically, *i.e.*, over the Internet or the FCC's Wide Area Network. In either case, each authorized bidder must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the

FCC will not work for Auction No. 50. The telephonic bidding phone number will be supplied in the first overnight mailing, which includes the confidential bidder identification number. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175.

84. Please note that the SecurID cards can be recycled, and the Bureau encourage bidders to return the cards to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

G. Mock Auction

85. All qualified bidders will be eligible to participate in a mock auction on Friday, September 19, 2003. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

86. The first round of bidding for Auction No. 50 will begin on Wednesday, September 24, 2003. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

87. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed to award all licenses in Auction No. 50 in a simultaneous multiple round auction. Space Data proposes that the Commission use combinatorial bidding for Auction No. 50 or, alternatively, for the regional licenses only. Space Data believes that participants that have, or intend to deploy, nationwide systems, likely would value certain combinations of MTA licenses that would be ideal for filling in coverage areas initially established by licenses won in Auction No. 41. They also believe the regional licenses are uniquely complementary, because, in combination, they effectively constitute a nationwide license and will be more highly valued as a combined package by prospective auction participants intending to deploy nationwide service.

88. As stated previously in the *Auction No. 50 Procedures Public Notice*, the Bureau will conduct Auction No. 50 as a simultaneous multiple round auction *without* package bidding. Unless otherwise announced, bids will

be accepted on all licenses in each round of the auction.

89. Also as previously stated, the Bureau has tentatively concluded that it may be appropriate to use package bidding for auctioning the regional licenses. Accordingly, the Bureau has removed the regional licenses from this auction and will include them in Auction No. 51. It will announce the dates for Auction No. 51 and seek comment on a package bidding auction design and other auction procedures in a public notice.

ii. Maximum Eligibility and Activity Rules

90. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. The Bureau received no comments on this issue.

91. For Auction No. 50 the Bureau adopts this proposal. The amount of the upfront payment submitted by a bidder determines the maximum initial eligibility (in bidding units) for each bidder. Note again that each license is assigned a specific number of bidding units equal to the upfront payments listed in Attachment A of the *Auction No. 50 Procedures Public Notice* on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids. As there is no provision for increasing a bidder's eligibility during the course of an auction (as described under "Auction Stages" in section IV.A.3), prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollars a bidder may bid on any given license.

92. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their current eligibility during each round of the auction.

93. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits a bid in the current round (see "Bid Increments and Minimum Acceptable Bids" in section IV.B.(iii)). The minimum required

activity is expressed as a percentage of the bidder's current bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in section IV.A.iii and "Stage Transitions" in section IV.A.iv), the Bureau adopts them for Auction No. 50.

iii. Auction Stages

94. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed to conduct the auction in three stages and employ an activity rule. It further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 90 percent of its current bidding eligibility. Finally, the Bureau proposed that a bidder in Stage Three, in order to maintain its current eligibility, would be required to be active on 98 percent of its current bidding eligibility. The Bureau received no comments on this proposal.

95. The Bureau adopts its proposals for the activity rules. Listed are the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

Stage One: During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses that represent at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by five-fourths (5/4).

Stage Two: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids

and bids during the current round) by ten-ninths (10/9).

Stage Three: During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this stage, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by fifty-fortyninths (50/49).

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity level at stage transitions. Bidders may check their activity against the required activity level by using the bidding system's bidding module.

96. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, the Bureau adopts them for Auction No. 50.

iv. Stage Transitions

97. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 20 percent for three consecutive rounds of bidding in each Stage. The Bureau further proposed that it retain the discretion to change stages unilaterally by announcement during the auction. This determination, the Bureau proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau received no comments on this subject.

98. The Bureau adopts its proposal. Thus, the auction will start in Stage One and will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 20 percent or less of the licenses being auctioned

(as measured in bidding units). In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 50.

v. Activity Rule Waivers and Reducing Eligibility

99. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed that each bidder in the auction would be provided five activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. The Bureau received no comment on this issue.

100. Based upon the its experience in previous auctions, the Bureau adopts its proposal that each bidder be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required level. An activity rule waiver applies to an entire round of bidding and not to a particular license. The Bureau is satisfied that its practice of providing five waivers over the course of the auction provides a sufficient number of waivers and flexibility to the bidders, while safeguarding the integrity of the auction.

101. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the required activity level. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

102. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override

the automatic waiver mechanism during the round by using the "reduce eligibility" function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (see section IV.A.iii discussion). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

103. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the FCC Automated Auction System) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new bids or withdrawals will not keep the auction open.

Note: Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

vi. Auction Stopping Rules

104. For Auction No. 50, the Bureau proposed to employ a simultaneous stopping rule approach. The Bureau also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on the license for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

105. The Bureau further proposed retaining the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

106. In addition, the Bureau proposed that it reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds.

The Bureau proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders will be required to maintain a higher level of bidding activity), increasing the number of rounds per day, and/or adjusting the minimum acceptable bids and bid increments for the licenses.

107. The Bureau received no comments concerning the auction stopping rules; therefore, it adopts the proposals. Auction No. 50 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. The Bureau believes that these stopping rules are most appropriate for Auction No. 50, because its experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

vii. Auction Delay, Suspension, or Cancellation

108. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.

109. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of

this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

110. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

111. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

112. *Background.* The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

113. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 50 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 50, the Bureau proposed the following license-

by-license formula for calculating minimum opening bids:

$\$.00001 * \text{kHz} * \text{License Area}$
Population with a minimum of \$500 per license.

114. In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

115. No comments were received. Therefore the Bureau adopts minimum opening bids for Auction No. 50, which are reducible at the discretion of the Bureau. The Bureau emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any requests to reduce the minimum opening bid on specific licenses.

116. The specific minimum opening bids for each license available in Auction No. 50 are set forth in Attachment A of the *Auction No. 50 Procedures Public Notice*.

iii. Minimum Acceptable Bids and Bid Increments

117. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed to use a smoothing methodology to calculate minimum acceptable bids. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment F of the *Auction No. 50 Procedures Public Notice*. The Bureau further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate. The Bureau received no comment on this issue.

118. In each round, each eligible bidder will be able to place a bid on the particular license for which it applied in any of nine different amounts. The FCC Automated Auction System will list the nine acceptable bid amounts for each license.

119. At the start of the auction and until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Corresponding additional bid amounts will be calculated using bid increments defined as the difference between the minimum opening bid times one plus the percentage

increment, rounded as described in Attachment F of the *Auction No. 50 Procedures Public Notice*, and the minimum opening bid—*i.e.*, bid increment = (minimum opening bid)(1 + percentage increment) {rounded} – (minimum opening bid). At the start of the auction and until a bid has been placed on a license, the nine acceptable bid amounts for each license consist of the minimum opening bid and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the minimum opening bid plus the bid increment, the third bid amount equals the minimum opening bid plus two times the bid increment, etc.).

120. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in Attachment F of the *Auction No. 50 Procedures Public Notice*. The difference between the minimum acceptable bid and the standing high bid for each license will define the bid increment—*i.e.*, bid increment = (minimum acceptable bid) – (standing high bid). The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

121. The Bureau retains the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if it determines circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

iv. High Bids

122. At the end of each bidding round, the high bids will be determined based on the highest gross bid amount of the bids received for each license.

123. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed to use a random number generator to select a high bid in the event of identical high bids on a license in a given round (*i.e.*, tied bids). A random number will be assigned to each bid. The tied bid having the highest random number will become the standing high bid. The remaining bidders, as well as the high

bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the license.

v. Bidding

124. During a round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

125. Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 50.

126. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (i) the licenses applied for on FCC Form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

127. In order to access the bidding functions of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print bid confirmations for each round after they have completed all of the activity for that round.

128. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. For each license, the FCC Automated Auction System interface will list the nine acceptable bid amounts in a drop-

down box. Bidders may use the drop-down box to select from among the nine acceptable bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing their bid information.

129. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in section IV.B.iii.

130. Finally, bidders are cautioned in selecting their bid amounts because, as explained in the following section, bidders who withdraw a standing high bid from a previous round, even if mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

131. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal procedures. With respect to bid withdrawals, the Bureau proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized would be at the bidder's discretion. The Bureau received no comments on this issue.

132. *Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure, about which the Bureau received no comments, will enhance bidder flexibility during the auction. Therefore, the Bureau adopts these procedures for Auction No. 50.

133. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function in the FCC Automated Auction System (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid

withdrawal payments specified in 47 CFR 1.2104(g).

Note: Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.

134. In previous auctions, the Bureau has detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While it continues to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various licenses in combination, the Bureau concludes that, for Auction No. 50, adoption of a limit on their use to two rounds per bidder is the most appropriate outcome. By doing so the Bureau believes it strikes a reasonable compromise that will allow bidders to use withdrawals. The Bureau's decision on this issue is based upon its experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this auction.

135. The Bureau will therefore limit the number of rounds in which each bidder may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

136. If a high bid is withdrawn, the minimum accepted bid will equal the second highest bid received for the license, which may be less than, or equal to, in the case of tied bids, the amount of the withdrawn bid. To set the additional bid amounts, the second highest bid also will be used in place of the standing high bid in the formula used to calculate bid increments. The Commission will serve as a "place holder" high bidder on the license until a new bid is submitted on that license.

137. *Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). See 47 CFR 1.2104(g)(1). In the case of multiple bid withdrawals on a single license, within the same or

subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders to allocate their resources most efficiently as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

138. In the *Part 1 Fifth Report and Order*, the Commission modified § 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments. As amended, § 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

139. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 50 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

140. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

ix. Maintaining the Accuracy of FCC Form 175 Information

141. As noted in section II.H., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Applicants must make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division at the following address: auction50@fcc.gov. The electronic mail summarizing the changes should include a subject or caption referring to Auction No. 50. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

142. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850. Questions about other changes should be directed to Christopher Shields of the Auctions and Industry Analysis Division at (202) 418-0660.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

143. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying winning bidders, down payments and any withdrawn bid payments due.

144. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable small and very small business bidding credits). See 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," section IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability,

before being applied toward down payments.)

B. Long-Form Application (FCC Form 601)

145. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction No. 50. Winning bidders that are small or very small businesses must include an exhibit demonstrating their eligibility for small and very small business bidding credits. See 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

C. Ownership Disclosure Information Report (FCC Form 602)

146. At the time it submits its long-form application (FCC Form 601), each winning bidder also must comply with the ownership reporting requirements as set forth in 47 CFR 1.913, 1.919, and 1.2112(a). The Bureau reminds applicants that effective December 10, 2002, electronic filing of the Ownership Disclosure Information Report (FCC Form 602) became mandatory. Accordingly, forms filed manually will not be accepted. Winning bidders without a current Form 602 already on file with the Commission must submit a properly completed Form 602 at the time they submit their long-form applications. Further filing instructions will be provided to auction winners at the close of the auction.

D. Tribal Land Bidding Credit

147. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

148. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit *after* winning the auction when it files its long-form application (FCC Form 601). When filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal land bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a

tribal land bidding credit, the applicant will have 90 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal land bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f).

149. For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices. Relevant documents can be viewed on the Commission's Web site by going to <http://wireless.fcc.gov/auctions> and clicking on the *Tribal Land Credits* link.

E. Default and Disqualification

150. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.21104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

F. Refund of Remaining Upfront Payment Balance

151. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 50 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

152. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not

withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions and a Taxpayer Identification Number (TIN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW., Room 1-C863, Washington, DC 20554.

153. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates at (202) 418-0496 or Gail Glasser at (202) 418-0578.

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 03-7459 Filed 3-27-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, this notice advises interested persons of the first of the Technological Advisory Council ("Council") under its new charter.

DATES: April 17, 2003, beginning at 10 a.m. and concluding at 3 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Room TW-C305 Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for Filing Instructions.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, (202) 418-1096.

SUPPLEMENTARY INFORMATION: Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. The

Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from different areas such as manufacturing, academia, communications services providers, the research community, etc., can provide advice to the FCC on innovation in the communications industry. At this first meeting under the Council's new charter, the topic of broadband access technologies will be treated using a symposium format. Members of the public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Federal Communications Commission's Designated Federal Officer for the Technological Advisory Council, before the meeting. Mr. Goldthorp's e-mail address is jgoldtho@fcc.gov. Mail delivery address is: Federal Communications Commission, 445 12th Street, SW., Room 7-A325, Washington, DC 20554.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03-7523 Filed 3-27-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice; one altered Privacy Act system of records; deletion of five routine uses; and addition of one new routine use.

SUMMARY: Pursuant to the provisions of the *Privacy Act of 1974*, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), the FCC proposes to change the name and alter one system of records, FCC/Central-2, "Employee Locator System" (formerly "Employee Locator Card Files"). The altered system of records will incorporate changes in what information is maintained and how the information is stored—from a paper file card system to an electronic database; the deletion of five routine uses; the addition of one new routine use; and other edits and revisions as necessary.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (e)(11) of the *Privacy Act of 1974*, as amended, any interested

person may submit written comments concerning the routine uses of this system on or before April 28, 2003. Pursuant to Appendix I, 4(e) of OMB Circular A-130, the FCC is asking the Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, to grant a waiver of the 40 day review period by OMB, the House of Representatives, and the Senate for this system of records. The FCC is requesting this waiver because the war emergency and homeland security make it imperative that the Commission has this system of records available so that in case of an emergency that affects FCC employees caused by the war or terrorism, emergency personnel can quickly reach the designated "contacts" of these employees.

The proposed altered system shall be effective on April 28, 2003, unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(r) of the *Privacy Act of 1974*, as amended, the FCC has submitted reports on this proposed altered system to OMB and both Houses of Congress.

ADDRESSES: Comments should be sent to Les Smith, Privacy Act Clerk, Performance Evaluation and Records Management (PERM), Room 1-A804, Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554, (202) 418-0217, or via the Internet at lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Les Smith, (202) 418-0217 or via the Internet at lesmith@fcc.gov; or Michele Sutton, (202) 418-0137 or via the Internet at msutton@fcc.gov.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed altered system of records maintained by the FCC; deletion of five routine uses; and addition of one new routine use. See 65 FR 63468, October 23, 2000. The purposes for altering FCC/Central-2, "Personnel Investigation System" are to change the name of the system of records to reflect the change in the way the system is maintained—from a paper file card system to an electronic database; to change the information that is being maintained; to delete five routine uses; to add one new routine use; and otherwise to alter, update, and revise this system of records as necessary.

The FCC proposes to achieve these purposes by altering this system of

records, FCC/Central-2, "Personnel Locator System" (formerly "Personnel Locator Card Files") with these changes: A change in the information that is being maintained; the deletion of five routine uses; the addition of one new routine use to address the new and/or revised information that is being maintained: this Routine Use allows disclosure to emergency medical personnel, *i.e.*, doctors, nurses, and/or paramedics, or to law enforcement officials in case of a medical or other emergency involving the FCC employee.

The alteration, revision, or modification of various data elements in FCC/Central-2, including editorial changes to update, simplify, or clarify, as necessary, this system of records.

The Human Resources Office (AMD-HRM) will use the records in FCC/Central-2, "Employee Locator System," to identify the individual(s) to contact, should an emergency of a medical or other nature involving the Commission employee occur while the employee is on the job. Initial collection and requested periodic updates are voluntary, as the employee does not have to provide it. This notice meets the requirement documenting the change in the Commission's system of records, and provides the public, Congress, and the Office of Management and Budget (OMB) an opportunity to comment.

FCC/Central-2

SYSTEM NAME:

Employee Locator System.

SECURITY CLASSIFICATION:

This system of records has not been given a security classification.

SYSTEM LOCATION:

Human Resources Office (AMD-HRM), Bureau and Office Administrative Offices, Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554 and 1270 Fairfield Road, Gettysburg, Pennsylvania 17325.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of the Federal Communications Commission (FCC).

CATEGORIES OF RECORDS IN THE SYSTEM:

1. The FCC employee's name, Bureau/Office, floor, room number, work and home telephone numbers; and
2. The name(s), e-mail address(es), and telephone number(s) of the individual(s) to contact in the event of a medical or other emergency involving the FCC employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901 and 44 U.S.C. 3101.

PURPOSE(S):

The records in this system serve to identify the individual(s) to contact, should an emergency of a medical or other nature involving the Commission employee occur while the employee is on the job. Initial collection and requested periodic updates are voluntary, as the employee does not have to provide it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record on an individual in this system of records may be disclosed to emergency medical personnel, *i.e.*, doctors, nurses, and/or paramedics, or to law enforcement officials in case of a medical or other emergency involving the FCC employee.

In each of these cases, the FCC will determine whether disclosure of the record is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are maintained in a network computer database.

RETRIEVABILITY:

Records are retrieved by the employee's name, Bureau/Office, floor, and room number.

SAFEGUARDS:

Electronic records are maintained in a network computer database, which is secured through controlled access and passwords restricted to the employee, Human Resources Office (AMD-HRM) employees, administrative personnel, and emergency relocation site employees.

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is a current employee of the Federal Communications Commission. When an employee leaves the Commission, the electronic records are destroyed by electronic erasure.

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Office (AMD-HRM), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554 and 1270 Fairfield Road, Gettysburg, Pennsylvania 17325.

NOTIFICATION PROCEDURE:

FCC employees wishing to inquire whether this system contains

information about them should contact the Human Resources Office (AMD-HRM), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554 and 1270 Fairfield Road, Gettysburg, Pennsylvania 17325. Individuals must supply their full name in order for records to be located and identified.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03-7554 Filed 3-27-03; 8:45 am]

BILLING CODE 6712-01-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 April 11, 2003.

A. Federal Reserve Bank of Kansas City (Susan Zubratt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Harold D. Poland*, Clyde, Kansas; to retain control of Elkcorp, Inc., Clyde, Kansas, and thereby indirectly retain control of The Elk State Bank, Clyde, Kansas.

Board of Governors of the Federal Reserve System, March 24, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03-7376 Filed 3-27-03; 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 website at <http://www.ffiec.gov/nic/>.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 21, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *First American Bancshares, Inc.*, Iuka, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of First American National Bank, Iuka, Mississippi.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *BSA Bankshares, Inc.*, Abilene, Texas, and *BSA Delaware, Inc.*, Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of The Bevans State Bank of Menard, Menard, Texas.

Board of Governors of the Federal Reserve System, March 24, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03-7375 Filed 3-27-03; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention**

[60Day-03-55]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498-1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: AIDS Prevention Surveillance Project Reports OMB No. 0920-0208—Extension—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention.

CDC proposes to continue the collection of data for the AIDS Prevention and Surveillance Project

Reports, OMB No. 0920-0208, for an additional 3 years. This request is for a 3-year extension. There are currently 65 cooperative agreements for HIV prevention projects (50 states, 6 cities, 7 territories, Washington, DC, and Puerto Rico) and 54 community based organizations to support HIV counseling, testing, and referral programs funded by CDC. Program initiatives such as HIV counseling, testing, and referral services in STD clinics, Women's Health Centers, Drug Treatment Centers, and other health facilities have been described as a primary prevention strategy of the national HIV prevention program. The funded public health departments and community based organizations have increased the provision of HIV counseling, testing, and referral activities to those at increased risk for acquiring or transmitting HIV, as well as

minority communities and women of child bearing age. CDC is responsible for monitoring and evaluating HIV prevention programs conducted under the HIV Prevention cooperative agreements. HIV counseling, testing, and referral services are a major component of HIV prevention programs. Without data to measure the impact of HIV counseling, testing, and referral programs, HIV prevention program priorities cannot be assessed and redirected to prevent further spread of the virus in the general population. CDC needs information from all grantees describing the number of HIV tests completed for at-risk persons and the number HIV-positive test results for at-risk persons. The HIV counseling and testing report form provides a simple yet complete means to collect this information. Public health departments will be able to use either a summary form, a scan form, or a form unique to their

jurisdiction. All reporting to the CDC will take place electronically. Sixteen (16) respondents (public health departments) will use the summary data collection tool. It takes approximately 2 hours to complete the form. The respondents will complete the form 4 times each year for a total burden of 8 hours per year per project area. Thirty (30) respondents (public health departments) will use a scan form provided by CDC. Nineteen (19) respondents (public health departments) will use a form unique to their jurisdiction. It will take approximately 15 minutes for each respondent using either the scan or unique formats to transfer data to CDC electronically on a quarterly basis for a total burden per project area of 1 hour per year. Therefore, the total burden hours for collecting this data will be 49 hours. There is no cost to respondents except for their time.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Manual Form Project Areas	16	4	2	128
Scan or Unique Form Project	49	4	15/60	49
Total				177

Dated: March 21, 2003.
Thomas Bartenfeld,
Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.
 [FR Doc. 03-7457 Filed 3-27-03; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03015]

Unintentional Injury and Violence Prevention and Control Initiatives Related to the World Health Organization (WHO); Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to award fiscal year (FY) 2003 funds for an international grant program to promote surveillance, research, and dissemination of expertise and information related to unintentional injury and violence prevention and control.

B. Eligible Applicant

Assistance will be provided only to the World Health Organization (WHO). WHO is the technical agency for health within the United Nations, they have access to all national health promotion and research sites, and they collaborate with other international organizations to coordinate research initiatives and disseminate violence prevention and control programs.

C. Funding

Approximately \$109,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or about March 30, 2003, and will be made for a 12-month budget period within a project period of up to three years.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341-4146. Telephone: 770-488-2700.

For technical questions about this program, contact: Richard J. Waxweiler, Ph.D., Associate Director for Extramural Research, National Center for Injury Prevention and Control, Centers for

Disease Control and Prevention (CDC), Mail Stop K-02, 4770 Buford Highway, NE., Atlanta, GA 30341. Telephone: (770) 488-4694. E-mail address: rwaxweiler@cdc.gov.

Dated: March 21, 2003.
Sandra R. Manning,
Director, Procurement and Grants Office, Centers for Disease Control and Prevention.
 [FR Doc. 03-7456 Filed 3-27-03; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03037]

Communication and Negotiation About Barrier Contraceptive Use Among Young Adults at Risk; Notice of Availability of Funds

Application Deadline: May 27, 2003.

A. Authority

This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. sections 247b(k)(2)], as amended. The

Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year 2003 funds for a cooperative agreement for a Communication and Negotiation About Barrier Contraceptive Use Among Young Adults At Risk. This program addresses the "Healthy People 2010" focus areas family planning, HIV, and sexually transmitted diseases.

The purpose of this program is to investigate the context within which sexually active young adult African American and Latino women and men (ages 18–25) communicate sexual values and negotiate about barrier contraceptive use (use of male condoms, female condoms, or the diaphragm). The program will develop, implement and evaluate case study intervention models to encourage choices and effective negotiation skills for prevention of HIV/STDs and unplanned pregnancies.

In Phase I, support will be provided for multi-method formative approaches toward understanding communication between heterosexual partners about sexual abstinence, monogamy, and barrier contraceptive use and factors influencing implicit expectations (about gender roles, reproductive ambivalence, competing contraceptive alternatives, power, cultural values, social norms, etc.) and explicit negotiation processes. This phase will culminate with the development of a plan for an intervention model.

Phase II will support implementation of case studies of community-based intervention models to facilitate communication about reproductive decision making and barrier contraceptive use among young adult women and men with their partners, using information gathered in Phase I.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP): Support prevention research to develop sustainable and transferable community-based behavioral interventions.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit organizations, community-based organizations, faith-based organizations, state and local

governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

D. Funding

Availability of Funds

Approximately \$800,000 is available in FY 2003 to fund approximately two awards. It is expected that the average award will be \$400,000, ranging from \$300,000 to \$450,000. It is expected that the awards will begin on or about September 1, 2003 and will be made for a 12-month budget period within a total project period of five years; the first phase will be for two-three years and the second phase will occur during the subsequent two-three years. Awards for Phase II will be subject to documented collaboration with community partner(s) and availability of funds. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Recipient Financial Participation

No matching funds are required for this program.

Funding Priority

Priority will be given to projects that demonstrate access to and propose to target young adult women and men at high risk for STDs, including HIV, and unintended pregnancies. Communities in which research is to be conducted, and interventions fielded, should be predominately African American or Latino and disproportionately affected by HIV and other STDs. Priority will be given to communities with rates of chlamydia, gonorrhea, and teen pregnancy that are above national average rates.

Funds may be awarded in such a way as to achieve geographic distribution of funded projects.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities listed

under Recipient Activities, and CDC will be responsible for activities listed under CDC Activities.

Recipient Activities

The recipient will be responsible for conducting the research outlined in Phase I, and using the formative research collected during this Phase to develop an intervention plan and case study evaluation for Phase II. Funding for Phase II will be contingent upon satisfactory progress as evidenced by required reports, the intervention plan, the documented establishment of a formal collaboration with a community-based organization equipped to implement the intervention model, and availability of funds. A complete description of the activities required within Phase I and Phase II follows.

Phase I (Years One to Two or One to Three)

This program announcement seeks a multi-method approach toward understanding the complexity of communication between partners: To what extent does negotiation about sexual choices, including monogamy, abstinence, and explicit barrier contraceptive use take place and by whom; the nature of the actual communication processes; and the context within which they lead to different outcomes. In this initial formative phase of the project, applicants are encouraged to propose creative, innovative data collection methods that will yield information about individual, social, and cultural factors that affect contraceptive decision making and behavior that may be used in the Phase II intervention design.

Activities to be conducted are:

1. Clearly identify key research questions to be addressed including, but not limited to:

a. How do young adult men and women make decisions about abstinence, sexual initiation, and monogamy?

b. How do sexually active young adult men and women decide to use barrier contraception and how are these choices negotiated? Or if not directly negotiated, how do social roles, norms, and expectations influence these decisions?

c. How are intimacy and commitment to mutual monogamy assumed, expected, and communicated between partners, and how do couples that perceive themselves as mutually monogamous communicate about barrier methods?

d. Are power differentials between young adult men and women perceived, and if so, how are they communicated (verbally or nonverbally)?

e. What are the tacit assumptions made or the explicit negotiation strategies commonly used by young women and men and how do partners respond to each approach (what contextual factors are important)?

f. Do young adult women and men use hierarchical strategies, if they have multiple contraceptive methods available?

g. What social and cultural factors predict young adult men's receptiveness to safe sex negotiation strategies offered by a female partner? What social and cultural factors predict young adult men's ability or willingness to negotiate?

h. How does marital and childbearing motivation, including cultural expectations, ambivalence about pregnancy and perceptions of each other's desires affect communication?

i. How do young adult men communicate their reproductive values to their partners and what is the context in which this occurs?

j. How does communication about hormonal contraceptive use (*e.g.*, oral contraceptives, implants, injectables, ring, patch) occur and what is the context in which it occurs or what prompts it to occur?

2. Conduct comprehensive literature review related to identified research questions.

3. Identify and recruit sexually active women and men, ages 18–25 from predominantly African American or Latino communities with documented HIV/STD risk characteristics (rates of chlamydia, gonorrhea, and teen pregnancy above national average rates).

4. Conduct formative research activities such as the following, but not limited to:

a. Development of vignettes or scenarios depicting communication of values and barrier negotiation strategies. Presentation of these vignettes to young adult men and women (individually or in groups), and assessment of their qualitative responses, similar experiences, and further development of the situations (for intervention planning).

b. Mixed or same sex focus groups to explore cultural/environmental influences and the role of peers in shaping attitudes toward communication about sexual values and choices, including barrier contraception. If focus groups are conducted, ensure that the appropriate privacy concerns are addressed, as information provided will be sensitive and confidential.

c. In-depth qualitative interviews with young adult men and women who are sexually active. May consider their specific experiences with barrier

contraceptive use, including successful communication, avoidance of use or dissuasion of a partner, partner responses, and perceptions of partner attitudes, roles, and monogamy. May explore implicit or explicit reproductive issues along with the context of negotiating hormonal contraceptive use (including newer methods, such as the contraceptive patch, ring, and emergency contraception).

d. Observational study of cohort of sexually active young adult men and women provided with barrier contraceptives (male condom, female condom, or diaphragm), trained in use of coital diaries (possibly a software log), and interviewed at follow-up intervals to assess act-by-act experiences with negotiation and partner communication (including contextual factors).

5. Conduct analyses of data collected using, but not limited to, these methods:

a. Identify the characteristics of different negotiation/communication styles among young adult women and men.

b. Identify key influences on these negotiation and communication styles.

c. Develop or identify existing quantitative measures of key variables that could be used in Phase II and be hypothesized to predict the behavior of women and men with different communication styles.

d. Collaborate with other recipients in the development and measurement of a common core set of variables to permit comparative analyses.

6. Develop a plan for using this formative research in the design of a theory and evidence-based intervention model feasible for implementation in a community-based case study.

a. Present relevant conceptual foundation for the model.

b. Integrate the results of the research with literature on communication interventions and strategies. As part of this synthesis, thoroughly document the intervention models and strategies that already exist.

c. Based on formative research, theory and the review of the intervention research, develop state-of-the-art recommendations on intervention strategies to promote successful negotiation and communication for young adult women and men at risk. These interventions must consider the characteristics of the community and cultural contexts of the participants' lives.

d. Collaborate with other recipients during development of design and protocol.

7. Establish and document formal collaboration with a community-based

organization(s) or partner qualified to carry out the work proposed in Phase II.

Phase II (Years Three to Five or Four to Five)

Case Study: Community-Based Intervention Models

Project(s) in this phase would implement and conduct a feasibility assessment of an intervention for facilitating reproductive decision-making and effective barrier contraceptive negotiation by young adult women and men based on the selected intervention plan. Proposed interventions should address the subtle strategies and interpersonal pathways to successful communication, the contextual (social normative, etc.) factors that facilitate or constrain negotiation and communication, and be designed to influence large numbers of young adult men and women in a community. Applicant activities to be conducted are:

1. Collaborate with community partners and members of the target group to plan all phases of the project.

2. Identify a community site for implementation of the case study. A comparison community may be used as part of a case study approach to evaluation that includes extensive process evaluation, documenting all aspects of program design and implementation.

3. Clearly state the objectives of the proposed intervention model.

4. Propose an intervention model that could be replicated in community-based settings (a concept and preliminary approaches proposed in this application must be fully developed based on Phase I: six a–d).

5. Develop and implement community-based intervention strategies that have the potential for broad reach and high impact.

6. The cost effectiveness of the model as a public health intervention must be addressed. Interventions that are costly and logistically difficult for implementation in public health settings, such as couples-based counseling interventions for young adults, will not be supported by this announcement.

7. Collaborate with other recipients during the development and implementation of the project evaluation.

CDC Activities

1. Host meetings each year to facilitate planning of the research program and to promote progress toward meeting national health objectives.

2. Provide technical assistance in the design and development of the

formative research, scientific review and evaluation of measurement strategies and instruments, and development of operational plans for the protocols. Coordinate review of intervention plans and process evaluation strategies.

3. Coordinate plans for data management and analysis of data from Phase I and Phase II; assist with development of plan for, and participation in analysis, preparation, and reporting of results.

4. Assist with development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. Perform site visits to assess program progress and to provide technical assistance.

F. Content

Letter of Intent (LOI)

A LOI is required for this program. The Program Announcement title and number must appear in the LOI. The LOI narrative should be no more than three pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. The LOI will be used to enable CDC to determine the level of interest in the announcement and should include the following information: Target group and site characteristics, experience collaborating with relevant community partner(s) and specific objectives to be addressed in the proposed project.

Applications

Program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The application narrative should be no more than 25 pages single-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of a Background and Significance section, a Plan, Objectives, Methods, a Research and Intervention Capacity section, a Collaboration section, Evaluation, and Budget.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before April 28, 2003. Submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the signed original and two copies of application form PHS 398. Forms are available at the following Internet address: <http://www.cdc.gov/od/pgo/forminfo.htm> If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) at: 770-488-2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time May 27, 2003. Submit the application to: Technical Information Management-PA# 03037, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Atlanta, GA 30341-4146.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO-TIM, notifying you that CDC has received your LOI and application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their LOI or application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an LOI or application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any LOI or application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of effectiveness must relate to the performance goal stated in section "B. Purpose" of this announcement. Measures must be objective and

quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria (in order of weight):

1. Methods (30 points)

The extent to which the design, methods, plans for instrument development, data collection, and analysis for Phase I are scientifically sound and capable of producing the intended results. The extent to which the research is innovative and represents a new approach by integrating new literature sources and using sophisticated methodology to identify subtle or complex communication variables. The extent to which the data synthesis process can be clearly used in a timely manner for development of the Phase II intervention plan. The extent to which the proposed intervention approaches for Phase II represent a consideration of appropriate theoretically, empirically, and programmatically justified intervention approaches which could realistically be adapted using Phase I data. The proposed intervention model should be feasible in community-based settings in which many women and men might be influenced. The extent to which the applicant describes a plan for process evaluation to be conducted during Phase II.

2. Background and Significance (15 points)

The extent to which the applicant: Describes the background leading to the application, including the theoretical or conceptual framework; critically evaluates existing knowledge; specifically identifies gaps that the Phase I project is intended to fill; and describes the target population and the potential health impact of the research and intervention.

3. Plan (15 points)

The quality of the justification for the theoretical, empirical and programmatic focus of Phase I research and the approach proposed for the Phase II intervention model (approaches and concepts considered for design of Phase II are expected in the application; the proposed intervention plan may be revised and will be fully developed at the end of Phase I).

The extent to which the applicant describes the proposed research plan for Phase I and the plan for establishing collaboration with a community-based

organization/partner qualified to carry out the work proposed in Phase II. In Phase I, linkage between the research questions and the formative research activities should be clearly presented. The extent to which the applicant proposes a feasible case study plan for Phase II.

The applicant must address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research plan. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Objectives (10 points)

The extent to which the applicant describes the broad objectives and the specific research questions this project is intended to address in Phase I and II. The research questions must address multiple levels: individual, partner, social, cultural, and other contextual variables. The objectives must be quantifiable in terms of output and timeline.

5. Research and Intervention Capacity (10 points)

The extent to which the applicant provides an account of the research team members' studies pertinent to the application that will help establish the experience and competence of the team members to pursue both phases of the proposed project. The extent to which the applicant documents access to researchers with experience and training in analysis of qualitative data, demonstrates the capacity to obtain the participation of adequate numbers of male and female participants from the proposed sites, and describes the adequacy of the staff (in each phase) and facilities to feasibly carry out the project. Extent of experience with formative research on this topic, experience conducting community-based interventions addressing sexual risk behavior or reproductive health, and experience implementing process evaluations.

6. Collaboration (10 points)

The extent to which the applicant describes how community partners and members of the target group will be involved in Phase I and potentially Phase II, defines the responsibilities of organizations in the community on this project and highlights past involvement with community-based organizations or partners (provides letters of support).

7. Evaluation (10 points)

The methods by which the applicant proposes to measure progress in meeting goals and objectives, and presents a reasonable plan for collecting data, analyzing data, and reporting the results. Quality assurance plan must be addressed.

8. Budget (reviewed but not scored)

The extent to which the budget and justification are consistent with program objectives and purpose.

9. Human Subjects Involvement (reviewed but not scored)

The extent to which the applicant addresses the requirements of 45 CFR part 46 for the protection of human subjects. Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

10. Performance Goals (reviewed but not scored)

The extent to which the applicant addresses the relevant Performance goals. The relevant goals include (timeline may vary):

Year 1: Design the formative research component, including literature review, methods, sampling frame, data collection instruments, and IRB package.

Year 2: Conduct data collection and prepare a detailed analysis and publication plan.

Year 3: Analyze the data, synthesize data with review of literature on communication interventions and strategies, prepare a report and develop an intervention and evaluation plan.

Year 4: Pending approval and funds, implement the intervention and prepare an interim process evaluation report.

Year 5: Evaluate the intervention and prepare a final report summarizing results of the case study and recommendations for technology transfer.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. An interim progress report. The interim progress report will be due on the 15th of March each year through 2008. This interim progress report will serve as your non-competing continuation application. A second report is due 90 days after the end of each budget period. These reports must include the following elements:

- a. A succinct description of the program accomplishments and progress made in meeting each Current Budget Period Activities Objectives during the previous six months of the budget period.

- b. A succinct description of the program accomplishments/narrative and progress made in meeting each Current Budget Period Activities Objectives during the previous six months of the budget period.

- c. The reason(s) for not meeting established program objectives and strategies to be implemented to achieve unmet objectives.

- d. Current Budget Period Financial Progress.

- e. New Budget Period Proposed Activities and Objectives.

- f. Detailed Line-Item Budget and Justification.

- g. For all proposed contracts, provide the name of contractor, method of selection, period of performance, scope of work, and itemized budget and budget justification. If the information is not available, please indicate "To Be Determined" until the information becomes available; it should be submitted to CDC Procurement and Grants Management Office contact identified in this program announcement.

2. Financial status report, no more than 90 days after the end of the budget period. The financial status report should include an attachment that identifies unspent balances for each program component.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement as posted on the CDC Web site.

AR-1 Human Subjects Requirements

AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR-5 HIV Program Review Panel Requirements
 AR-7 Executive Order 12372 Review
 AR-9 Paperwork Reduction Act Requirements
 AR-10 Smoke-Free Workplace Requirements
 AR-11 Healthy People 2010
 AR-12 Lobbying Restrictions

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: <http://www.cdc.gov>.

Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341-4146, Telephone: 770-488-2700.

For business management and budget assistance, in the states, contact: LaKassa Wyatt, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146, Telephone: 770-488-2728, E-mail address: Lwyatt@cdc.gov.

For business management and budget assistance in the territories, contact: Charlotte Flitcraft, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146, Telephone: 770-488-2632, E-mail address: caf5@cdc.gov.

For program technical assistance, contact: Rebecca Cabral, Ph.D., Division of Reproductive Health, Centers for Disease Control and Prevention, 4770 Buford Hwy, NE., Atlanta, GA 30341, Telephone: 770-488-6399, E-mail address: Rcabral@cdc.gov.

Dated: March 24, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03-7452 Filed 3-27-03; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-9016-N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—October 2002 Through December 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from October 2002 through December 2002, relating to the Medicare and Medicaid programs. This notice also provides information on national coverage determinations affecting specific medical and health care services under Medicare. Additionally, this notice identifies certain devices with investigational device exemption numbers approved by the Food and Drug Administration that potentially may be covered under Medicare.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are also including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. (See Section III of this notice for how to obtain listed material.)

Questions concerning items in Addendum III may be addressed to Karen Bowman, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, C5-16-03, 7500 Security Boulevard, Baltimore, MD 21244-1850, (410) 786-5252.

Questions concerning national coverage determinations should be directed to Shana Olshan, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1-09-06, 7500 Security Boulevard, Baltimore, MD 21244-1850, (410) 786-3122.

Questions concerning Investigational Device Exemptions items in Addendum VI may be addressed to Sharon Hippler, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C5-13-27, 7500 Security Boulevard, Baltimore, MD 21244-1850, (410) 786-4633.

Questions concerning all other information may be addressed to Margie Teeters, Office of Strategic Operations

and Regulatory Affairs, Regulations Development and Issuances Group, Centers for Medicare & Medicaid Services, C5-13-18, 7500 Security Boulevard, Baltimore, MD 21244-1850, (410) 786-4678.

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs. These programs pay for health care and related services for 39 million Medicare beneficiaries and 35 million Medicaid recipients. Administration of these programs involves (1) furnishing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public and (2) maintaining effective communications with regional offices, State governments, State Medicaid agencies, State survey agencies, various providers of health care, fiscal intermediaries and carriers that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act). We also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month time frame.

II. How to Use the Addenda

This notice is organized so that a reader may review the subjects of manual issuances, memoranda, substantive and interpretive regulations, national coverage determinations, and Food and Drug Administration-approved investigational device exemptions published during the timeframe to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our

Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) published in 1988, and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555). Those interested in the procedures used in making national coverage determinations may review the April 27, 1999 publication (64 FR 22619). In this publication, the 1989 proposed rule affecting national coverage procedures and decisions (54 FR 4302) was withdrawn, and the procedures for national coverage determinations established.

To aid the reader, we have organized and divided this current listing into six addenda:

- Addendum I lists the publication dates of the most recent quarterly listings of program issuances.
- Addendum II identifies previous **Federal Register** documents that contain a description of all previously published CMS Medicare and Medicaid manuals and memoranda.
- Addendum III lists a unique CMS transmittal number for each instruction in our manuals or Program Memoranda and its subject matter. A transmittal may consist of a single instruction or many. Often, it is necessary to use information in a transmittal in conjunction with information currently in the manuals.
- Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarters covered by this notice. For each item we list the—
 - Date published;
 - **Federal Register** citation;
 - Parts of the Code of Federal Regulations (CFR) that have changed (if applicable);
 - Agency file code number; and
 - Title of the regulation.
- Addendum V includes completed national coverage determinations from the quarter covered by this notice. Completed decisions are identified by title, a brief description, effective date, and section in the appropriate Federal publication.
- Addendum VI includes listings of the Food and Drug Administration-approved investigational device exemption categorizations, using the investigational device exemption numbers the Food and Drug Administration assigns. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B), and

identified by the investigational device exemption number.

III. How To Obtain Listed Material

A. Manuals

Those wishing to subscribe to program manuals should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents,
Government Printing Office, ATTN:
New Orders, P.O. Box 371954,
Pittsburgh, PA 15250-7954,
Telephone (202) 512-1800, Fax
number (202) 512-2250 (for credit
card orders); or
National Technical Information Service,
Department of Commerce, 5825 Port
Royal Road, Springfield, VA 22161,
Telephone (703) 487-4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, most manuals are available at the following Internet address: <http://cms.hhs.gov/manuals/default.asp>.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through *GPO Access*. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is <http://www.access.gpo.gov/nara/index.html>, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512-1661; type swais, then log in as guest (no password required).

C. Rulings

We publish rulings on an infrequent basis. Interested individuals can obtain copies from the nearest CMS Regional Office or review them at the nearest regional depository library. We have, on occasion, published rulings in the **Federal Register**. Rulings, beginning with those released in 1995, are available online, through the CMS Home Page. The Internet address is <http://cms.hhs.gov/rulings>.

D. CMS's Compact Disk-Read Only Memory (CD-ROM)

Our laws, regulations, and manuals are also available on CD-ROM and may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717-139-0000-3. The following material is on the CD-ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- CMS-related regulations.
- CMS manuals and monthly revisions.

- CMS program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1999. (Updated titles of the Social Security Laws are available on the Internet at http://www.ssa.gov/OP_Home/ssact/comp-toc.htm.) The remaining portions of CD-ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD-ROM. We intend to re-visit this issue in the near future and, with the aid of newer technology, we may again be able to include the appendices on CD-ROM.

Any cost report forms incorporated in the manuals are included on the CD-ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most

Federal Government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

Superintendent of Documents numbers for each CMS publication are shown in Addendum III, along with the CMS publication and transmittal numbers. To help FDLs locate the materials, use the Superintendent of Documents number, plus the transmittal number. For example, to find the Part 3—Claims Process, (CMS Pub. 13–3) transmittal entitled “Hearing Aide Exclusion,” use the Superintendent of

Documents No. HE 22.8/6 and the transmittal number 1868.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: March 18, 2003.

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

August 11, 1998 (63 FR 42857)
September 16, 1998 (63 FR 49598)
December 9, 1998 (63 FR 67899)
May 11, 1999 (64 FR 25351)
November 2, 1999 (64 FR 59185)
December 7, 1999 (64 FR 68357)

January 10, 2000 (65 FR 1400)
May 30, 2000 (65 FR 34481)
June 28, 2002 (67 FR 43762)
September 27, 2002 (67 FR 61130)
December 27, 2002 (67 FR 79109)

Addendum II—Description of Manuals, Memoranda, and CMS Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. (Please note that in this publication the 1989 proposed rule referred to, concerning the criteria for national coverage determinations, was withdrawn (64 FR 22619)). A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992 (57 FR 47468).

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[October 2002 Through December 2002]

Transmittal
No.

Manual/Subject/Publication number

Intermediary Manual Part 3—Claims Process (CMS Pub. 13–3)

(Superintendent of Documents No. HE 22.8/6)

1863	• Prospective Payment System Pricer Program Provider-Specific Payment Data Provider-Specific Data Record Layout and Description
1864	• Mammography Screening Diagnostic and Screening Mammography Performed With New Technologies
1865	• Overpayments for Provider Services—General
1866	• Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
1867	• Immunosuppressive Drugs Furnished to Transplant Patients
1868	• Hearing Aide Exclusion
1869	• Payment for Services Furnished by a Critical Access Hospital
1870	• Payment for Services Furnished by a Critical Access Hospital
1871	• Heart Transplants

Carriers Manual Part 3—Claims Process (CMS Pub. 14–3)

(Superintendent of Documents No. HE 22.8/7)

1772	• Type of Service
1773	• Durable Medical Equipment Regional Carriers Only—Appeals of Duplicate Claims Introduction to the Appeals Process
1774	• Home Dialysis Patients' Options for Billing Payment for Method II Home Dialysis Supplies When the Beneficiary is an Inpatient
1775	• Identifying a Screening Mammography Claim and a Diagnostic Mammography Claim Diagnostic and Screening Mammography Performed With New Technologies
1776	• Evaluation and Management Services Codes—General
1777	• Overpayments—General
1778	• Healthcare Common Procedure Coding System Coding
1779	• Coding Physician Specialty Coding Type of Supplier and Non-Physician Practitioners
1780	• Supervising Physicians in Teaching Settings
1781	• Hearing Aid Exclusion
1782	• Mandatory Assignment and Other Requirements for Home Dialysis Supplies and Equipment Paid Under Method II
1783	• Type of Service
1784	• Recovery Where Fraud Is Suspected

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[October 2002 Through December 2002]

Transmittal No.	Manual/Subject/Publication number
Carriers Manual Part 4—Professional Relations (CMS Pub. 14–4) (Superintendent of Documents No. HE 22.8/7–4)	
27	<ul style="list-style-type: none"> • Surrogate Unique Physician Identification Number
Program Memoranda Intermediaries (CMS Pub. 60A) (Superintendent of Documents No. HE 22.8/6–5)	
A–02–094	<ul style="list-style-type: none"> • Annual Desk Review Program for Hospital Wage Data: Cost Reporting Periods Beginning on or after October 1, 1999, Through September 30, 2000 (Fiscal Year 2004 Wage Index)
A–02–095	<ul style="list-style-type: none"> • Production Dates for the Provider Statistical and Reimbursement Report and Extension of Due Date for Filing Provider Cost Reports for Providers Having Their Claims Processed by the Arkansas Part A Standard System and Request for Wage Data for the FY 2004 Wage Index
A–02–096	<ul style="list-style-type: none"> • Payment of Skilled Nursing Facility Claims for Beneficiaries Disenrolling from Terminating Medicare+Choice Plans Who Have Not Met the 3-Day Hospital Stay Requirement
A–02–097	<ul style="list-style-type: none"> • Special Handling of New “K” Codes K0556, K0557, K0558, and K0559
A–02–098	<ul style="list-style-type: none"> • Changes in Transitional Outpatient Payment for 2003
A–02–099	<ul style="list-style-type: none"> • Scheduled Release for January Updates to Software Programs and Pricing/Coding Files
A–02–100	<ul style="list-style-type: none"> • Installation of Version 27.4 of the Provider Statistical and Reimbursement Report
A–02–101	<ul style="list-style-type: none"> • Changes to the Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update as Published in the Federal Register, Fiscal Year 2001 (66 FR 39572, July 31, 2001), and Transmittal A–01–144, December 20, 2001 Hospice Wage Index Fiscal Year 2003, as published in the Federal Register (67 FR 56092, August 30, 2002) Update to the Prospective Payment System for Home Health Agencies for FY 2003; as Published in the FEDERAL REGISTER, (67 FR 43616, June 28, 2002)
A–02–102	<ul style="list-style-type: none"> • Medicare Certified Hospices—Clarification of Acceptable Parameters for Some Contractual Arrangements
A–02–103	<ul style="list-style-type: none"> • New Electronic Remittance Advice Coding for Home Health Prospective Payment System Adjustments
A–02–104	<ul style="list-style-type: none"> • Provider Education Article: Home Health Agencies Responsibilities Regarding Patient Notification
A–02–105	<ul style="list-style-type: none"> • Removal of Common Working File Edit on Non-Covered Hospice Claims
A–02–106	<ul style="list-style-type: none"> • Provider Education Article: Hospitals Responsibilities Re: Patient Notification at Discharge Planning and Home Health Consolidated Billing
A–02–107	<ul style="list-style-type: none"> • Revisions to Common Working File Editing to Accommodate Home Health Partial Episode Payment Claims and Rescheduling of Payment Adjustment Utility
A–02–108	<ul style="list-style-type: none"> • Multiple Patient Ambulance Transport
A–02–109	<ul style="list-style-type: none"> • Cost Based Payment for Certified Registered Nurse Anesthetists’ Services Furnished by Outpatient Prospective Payment System Hospitals
A–02–110	<ul style="list-style-type: none"> • Financially Required Changes for the Fiscal Intermediary Standard System Paid Claim File
A–02–111	<ul style="list-style-type: none"> • October 2002 Update to the Hospital Outpatient Prospective Payment System—Correction—This instruction replaces PM A–02–076 (CR 2298) issued on August 7, 2002.
A–02–112	<ul style="list-style-type: none"> • Program Integrity Management Reporting System for Part A—Phase1
A–02–113	<ul style="list-style-type: none"> • Transmittal A–02–113 Has Been Rescinded
A–02–114	<ul style="list-style-type: none"> • Revisions to the Outpatient Prospective Payment System Pricer Software and Outpatient Code Editor for Blood Deductible and Technical Charges
A–02–115	<ul style="list-style-type: none"> • Medical Nutrition Therapy Services for Beneficiaries With Diabetes or Renal Disease—POLICY CHANGE
A–02–116	<ul style="list-style-type: none"> • Long Term Care Hospital Prospective Payment System: Requirements for Provider Education and Training
A–02–117	<ul style="list-style-type: none"> • Correction to Updated Instruction on Receipt and Processing on Non-Covered Charges on Other Than Part A Inpatient Claims (Transmittal A–02–071)
A–02–118	<ul style="list-style-type: none"> • Annual Update of Healthcare Common Procedure Coding System Codes for Skilled Nursing Facility Consolidated Billing Enforcement, Updated Skilled Nursing Facility Help File
A–02–119	<ul style="list-style-type: none"> • 0001 Revenue Line Direction for the Health Insurance Portability and Accountability Act Institutional 837 Health Care Claim
A–02–120	<ul style="list-style-type: none"> • Change in Requirements for Medicare Payment for Low Osmolar Contrast Material Under the Outpatient Prospective Payment System
A–02–121	<ul style="list-style-type: none"> • Skilled Nursing Facility Adjustment Billing: Adjustments to Health Insurance Prospective Payment System Codes Resulting From Minimum Data Set Corrections
A–02–122	<ul style="list-style-type: none"> • Notice Regarding Cost-to-Charge Ratios and Inpatient Outlier Payments
A–02–123	<ul style="list-style-type: none"> • Hospital Billing for Immunosuppressive Drugs Furnished to Transplant Patients—ACTION
A–02–124	<ul style="list-style-type: none"> • Necessary Changes to Implement Special Add-On Payments for New Technologies
A–02–125	<ul style="list-style-type: none"> • Installation of Version 29.0 of the Provider Statistical and Reimbursement Reporting System
A–02–126	<ul style="list-style-type: none"> • Instructions Regarding Hospital Outlier Payments
A–02–127	<ul style="list-style-type: none"> • Indian Health Service Hospital Payment Rates for Calendar Year 2002
Program Memorandum Carriers (CMS Pub. 60B) (Superintendent of Documents No. HE 22.8/6–5)	
B–01–062	<ul style="list-style-type: none"> • Payment to Registered Dietitians for Diabetes Outpatient Self-Management Training Services

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[October 2002 Through December 2002]

Transmittal No.	Manual/Subject/Publication number
B-02-063	• Annual Updating of ICD-9-CM Codes Must Be Date of Services Driven
B-02-064	• Viable Information Processing System Implementation to Process ICD-9-CM Codes Using Date of Service and Not Date of Receipt
B-02-065	• Durable Medical Equipment Regional Carriers-Establishment Common Working File Override for Legitimate Duplicate Claims
B-02-066	• Ambulance Services: Maintaining Point-of-Pickup Zip Code
B-02-067	• Revision to Messages for Skilled Nursing Facility Consolidated Billing and Implementation of Common Working File Edits for Clinical Social Workers for Skilled Nursing Facility Consolidated Billing
B-02-068	• Revised X12N 4010 837 Professional Flat File
B-02-069	• Messages for Use With Drug Claims
B-02-070	• Reporting of Admission Date and Additional Edit Requirements for the X12N 837 (Version 4010) Coordination of Benefits Transaction
B-02-071	• Use of the National Drug Code for Drug Claims at the Durable Medical Equipment Regional Carriers
B-02-072	• Calendar Year 2003 Participation Enrollment and Medicare Participating Physicians and Supplies Directory Procedures
B-02-073	• Durable Medical Equipment Regional Carriers-Establishment Common Working File Override for Legitimate Duplicate Claims
B-02-074	• Clarification on System Changes in Change Request 2299
B-02-075	• Carrier Review of Payment Amounts for Portable X-Ray Transportation Services (HCPCS code R0070)—Request
B-02-076	• Annual Update for Skilled Nursing Facility Consolidated Billing for the Common Working File and Medicare Carriers
B-02-077	• Program Integrity Management Reporting System for Part B
B-02-078	• Medical Review Progressive Corrective Action—ACTION
B-02-079	• Contractor Reporting of Operational and Workload Data for Electronic Data Interchange and Manual Transactions
B-02-080	• Medicare Status Code System Standard System Financial Data Report Requirements for the Production Performance Monitoring System, Pulse System
B-02-081	• Migrate Medicare Carrier Provider/Supplier Enrollment Data From the Existing Carrier Provider Enrollment System into the Provider Enrollment Chain Ownership System
B-02-082	• Migrate Medicare Carrier Provider/Supplier Enrollment Data From the Existing Carrier Provider Enrollment System into the Provider Enrollment Chain Ownership System and Shut Down All Provider Enrollment Functions in Percutaneous Electrical Nerve Stimulation
B-02-083	• Create Import/Export Functionality Between the Unique Provider Identification Number System and the Provider Enrollment Chain Ownership System
B-02-084	• Create Import/Export Functionality Between the Medicare Claims System and the Provider Enrollment Chain Ownership System
B-02-085	• Process All Medicare Part B Provider Enrollments in the Provider Enrollment Chain Ownership System. Modify the Medicare Claims System to Incorporate All Claim Payment and Provider Correspondence Functionality That Is Included in the Provider Enrollment System But Will Not Be a Part of Provider Enrollment System. Shut Down All Provider Enrollment Functions in Provider Enrollment System
B-02-086	• Create Import/Export Functionality Between the Viable Medicare System and the Provider Enrollment Chain Ownership System
B-02-087	• Skilled Nursing Facility Consolidated Billing—New Requirements for Claims for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies
B-02-088	• Changes to Correct Coding Edits, Version 9.1, Effective April 1, 2003
B-02-089	• Further Instructions Regarding the Reasonable Charge Update for 2003 for Splints and Casts
B-02-090	• Implementation of the National Council for Prescription Drug Programs (NCPDP) Telecommunications Standard Version 5.1 and the Equivalent Batch Standard Version 1.1 for Retail Pharmacy Drug Transactions—CORRECTION
B-02-091	• Provider Education Article: Requirements for Payment of Medicare Claims for Foot and Nail Care Services
B-02-092	• Electromagnetic Stimulation

**Program Memoranda
Intermediaries/Carriers
(CMS Pub. 60A/B)
(Superintendent of Documents No. HE 22.8/6-5)**

AB-02-134	• Questions and Answers Related to Implementation of National Coverage Determinations for Clinical Diagnostic Laboratory Services
AB-02-135	• System Networking Electronic Correspondence Referral System 1.3 User and Installation Guides for Testing and Production
AB-02-136	• Reasonable Charge Update for 2003 for Splints, Casts, Dialysis Supplies, Dialysis Equipment, Therapeutic Shoes, and Certain Intraocular Lenses
AB-02-137	• Annual Update of Healthcare Common Procedure Coding System Codes Used for Home Health Consolidated Billing Enforcement
AB-02-138	• Instructions for Fiscal Intermediary Standard System and Multi-Carrier System Healthcare Integrated General Ledger Accounting System Changes
AB-02-139	• Additional Guidance for Applying the Medicare Self-Administered Drug Exclusion
AB-02-140	• Data Center Testing and Production—Electronic Correspondence Referral System User Manual 5.1 and Quick Reference Guide Replacement
AB-02-141	• Charging Fees to Providers for Medicare Education and Training Activities-Program Management
AB-02-142	• Remittance Advice Coding Update
AB-02-143	• Provider Education Article: Psychotropic Drug Use in Skilled Nursing Facilities
AB-02-144	• Virginia Cardiac Surgery Initiative Demonstration

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[October 2002 Through December 2002]

Transmittal No.	Manual/Subject/Publication number
AB-02-145	• Electronic Patient Records Via Non-Internet Means
AB-02-146	• Revision to the Healthcare Provider Taxonomy Codes Crosswalk
AB-02-147	• Promoting Influenza Vaccinations
AB-02-148	• Remittance Advice Message for Ambulance Services
AB-02-149	• Update to the Mammography Quality Standard Act File Record Layout for the Food and Drug Administration Certified Digital Mammography Centers
AB-02-150	• Payment of Physician and Nonphysician Services for Certain Indian Providers
AB-02-151	• Clarification Regarding Non-physician Practitioners Billing on Behalf of a Diabetes Outpatient Self-Management Training Services Program and the Common Working File Edits for Diabetes Outpatient Self-Management Training Services & Medical Nutrition Therapy. (NOTE: APASS has received a waiver for this Change Request)
AB-02-152	• Fee Schedule Update for 2003 for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies
AB-02-153	• Claims Processing Instructions for the Medicare Disease Management Demonstration
AB-02-154	• New Waived Tests—September 27, 2002
AB-02-155	• Beneficiary Notification of Denials Based on Local Medical Review Policy
AB-02-156	• Coverage and Billing for Neuromuscular Electrical Stimulation
AB-02-157	• Codes Billable by Skilled Nursing Facilities and Suppliers for Skilled Nursing Facility Residents—Notice of New File Available via CMS Mainframe Telecommunication System
AB-02-158	• Common Working File, Fiscal Intermediary, and Carrier Edits and Policy Clarification for Peripheral Neuropathy With Loss of Protective Sensation in People With Diabetes
AB-02-159	• Medicare Deductible and Premium Rates for Calendar Year 2003
AB-02-160	• Medicare Telehealth Update
AB-02-161	• Coverage and Billing Requirements for Electrical Stimulation for the Treatment of Wounds
AB-02-162	• Deported Medicare Beneficiaries
AB-02-163	• 2003 Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment Method
AB-02-164	• Carrier, Durable Medical Equipment Regional Carrier, Intermediary and Regional Home Health Intermediary Processing Requirements for Claims Edited by Common Working File for Medicare Beneficiaries in State or Local Custody Under a Penal Authority
AB-02-165	• Levocarnitine for Use in the Treatment of Carnitine Deficiency in End Stage Renal Disease Patients
AB-02-166	• Editing of the Healthcare Provider Taxonomy Codes and Use of the Healthcare Provider Taxonomy Codes Crosswalk
AB-02-167	• Notice of Interest Rate for Medicare Overpayments and Underpayments
AB-02-168	• Advance Beneficiary Notice and Durable Medical Equipment Prosthetics, Orthotics & Supplies Refund Requirements—Corrections to PM AB-02-114
AB-02-169	• Notice Requirement Related to Local Medical Review Policies
AB-02-170	• File Descriptions and Instructions for Retrieving the 2003 Ambulatory Surgical Center Healthcare Common Procedure Code Additions and Deletions
AB-02-171	• X12N Health Care Eligibility Benefit Inquiry/Response (270/271) Transaction Security and Connectivity Instructions
AB-02-172	• Next Generation Desktop Data Center Connectivity—Security Information Clarification to Change Request 2079 (AB-02-073) Dated May 16, 2002
AB-02-173	• Ambulance Fee Schedule Updates for 2003
AB-02-174	• Single Drug Pricer
AB-02-175	• Revisions to Common Working File Edits for Skilled Nursing Facility Consolidated Billing to Permit Payment for Certain Diagnostic Services Furnished to Beneficiaries Receiving Treatment for End Stage Renal Disease at an Independent or Provider-Based Dialysis Facility
AB-02-176	• Prior Approval Requirement for Data Center and Front End Movement
AB-02-177	• Independent Laboratory Billing for the Technical Component of Physician Pathology Services to Hospital Patients
AB-02-178	• Clarification of the Comprehensive Error Rate Testing Program Contractor Resolution Process
AB-02-179	• Complaint Screening
AB-02-180	• Coverage and Billing for Home Prothrombin Time International Normalized Ratio Monitoring for Anticoagulation Management
AB-02-181	• Medicare Physician Fee Schedule Update and the 2003 Participation Enrollment Process
AB-03-182	• Coverage and Billing of Sacral Nerve Stimulation
AB-02-183	• Coverage of Hyperbaric Oxygen Therapy for the Treatment of Diabetic Wounds of the Lower Extremities
AB-02-184	• Provider Notification of Denials Based on Local Medical Review Policy
AB-02-185	• Deletion of Q Codes and Reactivation of CPT Codes for Hepatitis B Vaccine

Provider Reimbursement Manual—Part 1
(CMS Pub. 15-1)
Superintendent of Documents No. HE 22.8/4

423 • Regional Medicare Swing-Bed Rates

Hospital Manual
(CMS Pub. 10)
(Superintendent of Documents No. HE 22.8/2)

791 • Billing for Mammography Screening
Diagnostic Mammography
Diagnostic and Screening Mammograms Performed with New Technologies

792 • Pneumococcal Pneumonia, Influenza Virus, and Hepatitis B Vaccines

793 • Payment for Services Furnished by a Critical Access Hospital

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[October 2002 Through December 2002]

Transmittal No.	Manual/Subject/Publication number
794 795	<ul style="list-style-type: none"> • Payment for Services Furnished by a Critical Access Hospital • Heart Transplants
<p>Skilled Nursing Facility Manual (CMS—Pub. 12) Superintendent of Documents No. HE 22. 8/3</p>	
375	<ul style="list-style-type: none"> • Coverage and Patient Classification
<p>Coverage Issues Manual (CMS—Pub. 6) Superintendent of Documents No. HE 22. 8/14</p>	
160 161	<ul style="list-style-type: none"> • Neuromuscular Electrical Stimulation for Use by Spinal Cord Injured Patients for Walking • Electrical Stimulation for the Treatment of Wounds
162	<ul style="list-style-type: none"> • Durable Medical Equipment—Reference List • Photosensitive Drugs • Levocarnitine for Use in the Treatment of Carnitine Deficiency in End Stage Renal Disease Patients
163	<ul style="list-style-type: none"> • Home Blood Glucose Monitors
164	<ul style="list-style-type: none"> • Hyperbaric Oxygen Therapy
165	<ul style="list-style-type: none"> • Heart Transplants.
<p>Financial Management (CMS—Pub. 100–6)</p>	
12	<ul style="list-style-type: none"> • Bankruptcy <ul style="list-style-type: none"> Glossary of Acronyms Basic Bankruptcy Terms and Definitions Bankruptcy is Litigation Types of Bankruptcies Filing Bankruptcy Draws a Line in the Sand Bankruptcy Affects Nearly All Medicare Operations Recoupment and Set-off Time is of the Essence Definitions Contractor's Establishment of Relationships to Ensure Effective Actions Regarding Providers in Bankruptcy Contractor Staff Must Establish Relationships to Ensure That the Regional Office and Regional Counsel Receive Prompt Notice of Provider Bankruptcies, So That Medicare Can Take Quick Action Contractors Must Recognize and Advise Regional Office Staff About Potential Provider Bankruptcies Contractor Staff Will Establish a Relationship With the Regional Office That has Jurisdiction Over the Bankruptcy Regional Office Jurisdiction Generally Parallels the Bankruptcy Court Where Case is Filed Contractor and Regional Office Bankruptcy Point of Contact Staff Member Actions to Take When a Provider Files for Bankruptcy Establish Effective Lines of Communication With Partners Respond to Regional Office Requests for Information Immediate Contractor Directives From the Regional Office Tracking Debts/Contract Officer Communications Chain Bankruptcies Chain Providers Single Providers Serviced by a National Contractor Affirmative Recovery Actions Working With the Regional Office and Regional Counsel's Office Assumption of the Medicare Provider Agreement Settlement Agreements or Stipulations Recoupment Administrative Freeze/Set-off Preparing and Filing Proof of Claim Closure of Bankruptcy Cases and Treatment of Overpayment Reporting Systems at End of Bankruptcy Closing the Bankruptcy Case Debt Located at the Debt Collection Center or Department of the Treasury Managing Bankruptcy Debt at the Contractor Location
<p>Peer Review Organization (CMS—Pub. 100–10) Superintendent of Documents No. HE 22.8/8–15</p>	
89	<ul style="list-style-type: none"> • Citations and Authority <ul style="list-style-type: none"> Identification of Potential Violations Meeting With a Practitioner or Other Person Quality Improvement Organization Finding of a Violation Quality Improvement Organization Action on Final Finding of a Violation

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
 [October 2002 Through December 2002]

Transmittal No.	Manual/Subject/Publication number
	Quality Improvement Organization Report to the Office of Inspector General Imposition and Notification of Sanctions Effect of an Exclusion Sanction on Medicare Payment and Services Reinstatement After Exclusion Appeal Rights of the Excluded Practitioner or Other Person
End Stage Renal Disease Network (CMS—Pub. 100–14)	

14	<ul style="list-style-type: none"> • Authority <ul style="list-style-type: none"> Network’s Role Prior to Initiating Sanction Recommendation Project Officer Role in Sanction Procedures Duration and Removal of Alternative Sanction Definitions for the End Stage Renal Disease Complaint and Grievance Process End Stage Renal Disease Complaints and Grievance Role of Network in Handling a Complaint/Grievance End Stage Renal Disease Complaints and Grievance Process Facility Awareness of the Complaint/Grievance Process Use of Facility Complaint/Grievance Process Determination of Your Involvement Receiving a Complaint/Grievance Request of Grievance in Writing Referring Complaints and Grievances Written Acknowledgement of Grievances Investigation of Complaints and Grievances Life-Threatening Situations Challenging Patient Situations Advocating for Patient Rights Addressing a Complaint or Grievance Follow-up of a Grievance Conclusion of a Grievance Investigation Report and Letter to the Grievant Potential Outcomes of Complaint/Grievance Process Improvement Plans Content of Improvement Plans Time Periods for Review and Acceptance/Rejection of Improvement Plans Improvement Plans Tracking System Conclusion of Improvement Plans Non-Compliance With Improvement Plans Confidentiality and Disclosure of Information Identity of Complainant/Grievant Identity of Practitioner Identity of Facility Personal Representative Conflict of Interest End Stage Renal Disease Network Complaint Process End Stage Renal Disease Grievance Process End Stage Renal Disease Inquiry Process Time Table for Complaints and Grievances Model Response Letter of Acknowledgement of a Written Complaint/Grievance Consent to Disclose Identity—Model Form Designation of a Representative—Model Form Final Response to Grievant—Model Letter
----	--

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER
 [October 2002 through December 2002]

Publication date	FR Vol. 67 page	CFR part(s)	File code *	Regulation title
10/01/2002	61496	42 CFR 413 .....	.....	Principles of Reasonable Cost Reimbursement; Payment for End-Stage Renal Disease Services; Prospectively Determined Payment Rates for Skilled Nursing Facilities: OFR Correction.
10/01/2002	61496	42 CFR 460	CMS–1201–IFC	Medicare and Medicaid Programs; Programs of All-inclusive Care for the Elderly (PACE); Program Revisions.
10/01/2002	61632	.....	CMS–2160–N	State Children’s Health Insurance Program; Final Allotments to States, the District of Columbia, and U.S. Territories and Commonwealths for Fiscal Year 2003.

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued
[October 2002 through December 2002]

Publication date	FR Vol. 67 page	CFR part(s)	File code *	Regulation title
10/02/2002	61805	42 CFR 482	CMS-3018-N	Medicare and Medicaid Programs; Hospital Conditions of Participation: Clarification of the Regulatory Flexibility Analysis for Patients' Rights.
10/02/2002	61808	42 CFR 482, 483, 484.	CMS-3160-FC	Medicare and Medicaid Programs; Conditions of Participation: Immunization Standards for Hospitals, Long-Term Care Facilities, and Home Health Agencies.
10/02/2002	61956	42 CFR 457	CMS-2127-F	State Children's Health Insurance Program; Eligibility for Prenatal Care and Other Health Services for Unborn Children.
10/07/2002	62478	.....	CMS-4050-NR	Medicare Program; Changes in Medicare Appeals Procedures Based on Section 521 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000.
10/11/2002	63434	.....	CMS-3109-N	Medicare Program; Town Hall Meeting on the Hospital "1-Hour" Rule Related to the Use of Restraint and Seclusion.
10/16/2002	63966	.....	CMS-1201-IFC	Medicare and Medicaid Programs; Programs of All-inclusive Care for the Elderly (PACE); Program Revisions: OFR Correction.
10/21/2002	64641	.....	CMS-8013-N	Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 2003.
10/21/2002	64643	.....	CMS-8014-N	Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 2003.
10/21/2002	64649	.....	CMS-8015-N	Medicare Program; Part A Premiums for 2003 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement.
10/25/2002	65504	42 CFR 431 and 438.	CMS-2104-F2	Medicaid Program; Medicaid Managed Care: New Provisions Correcting Amendment.
10/25/2002	65582	.....	CMS-2087-FN	Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2001.
10/25/2002	65585	.....	CMS-2159-N	Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Continuance of Approval of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) as an Accrediting Organization.
10/25/2002	65588	.....	CMS-4038-N	Medicare Program; Meeting of the Advisory Panel on Medicare Education—November 19, 2002.
10/25/2002	65672	42 CFR 409, 417, 422.	CMS-4041-P	Medicare Program; Modifications to Managed Care Rules.
11/01/2002	66642	.....	CMS-2141-FN	Medicare and Medicaid Programs; Approval of the American Osteopathic Association for Deeming Authority for Ambulatory Surgical Centers.
11/01/2002	66718	42 CFR 405 and 419.	CMS-1206-FC and CMS-1179-F.	Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; and Changes to Payment Suspension for Unfiled Cost Reports.
11/05/2002	67318	42 CFR 410 and 414.	CMS-1204-N	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2003, Notice of Delay of Final Rule.
11/15/2002	69146	42 CFR 405 and 419.	CMS-1206-CN	Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; and Changes to Payment Suspension for Unfiled Cost Reports; Correction.
11/15/2002	69182	42 CFR 405	CMS-4004-P	Medicare Program; Changes to the Medicare Claims Appeal Procedures.
11/22/2002	70322	42 CFR 411	CMS-1809-F2	Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships: Extension of Partial Delay of Effective Date.
11/22/2002	70358	42 CFR 412, 413, 476, 484.	CMS-3055-P	Medicare Program; Photocopying Reimbursement Methodology.
11/22/2002	70363	42 CFR 418	CMS-1022-P	Medicare Program; Hospice Care Amendments.
11/22/2002	70373	42 CFR 482	CMS-1224-P	Medicare Program; Nondiscrimination in Posthospital Referral to Home Health Agencies and Other Entities.
11/22/2002	70435	.....	CMS-1241-NC	Medicare and Medicaid Programs; Announcement of Applications From Hospitals Requesting Waivers For Organ Procurement Service Areas.
11/22/2002	70437	.....	CMS-2154-FN	Medicare and Medicaid Programs; Application by the Joint Commission on Accreditation of Healthcare Organizations for Continued Deeming Authority for Ambulatory Surgical Centers.

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued
[October 2002 through December 2002]

Publication date	FR Vol. 67 page	CFR part(s)	File code*	Regulation title
11/22/2002	70439	.....	CMS-2155-FN	Medicare and Medicaid Programs; Approval of Application for Deeming Authority for Ambulatory Surgical Centers by the Accreditation Association for Ambulatory Health Care.
11/22/2002	70442	.....	CMS-1220-N	Medicare Program; Fee Schedule for Payment of Ambulance Services' Update for CY 2003.
11/22/2002	70444	.....	CMS-1217-N	Medicare Program; December 16, 2002, Meeting of the Practicing Physicians Advisory Council.
11/22/2002 .....	.....	.....	CMS-6012-N3	Medicare Program; Establishment of the Negotiated Rulemaking Committee on Special Payment Provisions and Requirements For Prosthetics and Certain Custom-Fabricated Orthotics: January 6-7 and February 10-11, 2003 Meetings.
12/13/2002	76684	42 CFR 405	CMS-1908-IFC	Medicare Program; Application of Inherent Reasonableness to All Medicare Part B Services (Other Than Physician Services).
12/27/2002	79107	.....	CMS-1231-N	Medicare Program; Re-Chartering of the Advisory Panel on Ambulatory Payment Classification Groups and Notice of Meeting of the Advisory Panel—January 21, 22, and 23, 2003.
12/27/2002	79109	.....	CMS-3104-N	Medicare Program; Renewal and Amendment of the Charter of the Medicare Coverage Advisory Committee (MCAC).
12/27/2003	79109	.....	CMS-9015-N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—July-September 2002.
12/27/2003	79122	.....	CMS-4055-N	Medicare Program; National Medicare+Choice Risk Adjustment Public Meeting—February 3, 2003.
12/27/2002	79123	.....	CMS-1202-CN	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Correction Notice.
12/27/2002	79124	.....	CMS-3105-N	Medicare Program; Meeting of the Medicare Coverage Advisory Committee—February 12, 2003.
12/27/2002	79125	.....	CMS-1234-N	Medicare Program; February 10, 2003, Meeting of the Practicing Physicians Advisory Council.
12/31/2002	79966	42 CFR 410, 414, 485.	CMS-1204-FC	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2003 and Inclusion of Registered Nurses in the Personnel Provision of the Critical Access Hospital Emergency Services Requirement for Frontier Areas and Remote Locations.

Addendum V—National Coverage Determinations [October 2002 through December 2002]

A national coverage determination (NCD) is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under Title XVIII of the Social Security Act, but does not include a determination of what code, if any, is assigned to a particular item or service

covered under this title or determination with respect to the amount of payment made for a particular item or service so covered. We include below all of the NCDs that became effective during the quarter covered by this notice. The entries below include information concerning completed decisions as well as sections on program and decision memoranda, which also announce impending decisions or, in some cases,

explain why it was not appropriate to issue an NCD. We identify completed decisions by title, effective date, and section of the publication where the decision can be found. Also, please note that in some cases more than one NCD was made affecting a single procedure. Information on completed decisions as well as pending decisions has also been posted on the CMS Web site at <http://cms.hhs.gov/coverage>.

NATIONAL COVERAGE DECISIONS FOR QUARTERLY NOTICES
[Coverage Issues Manual—CMS Pub. 06]

Section	Title	Effective date
35-10	Hyperbaric Oxygen Therapy	April 1, 2003.
35-87	Heart Transplants	April 1, 2003.
60-11	Home Blood Glucose Monitors	not applicable.

Addendum VI—Categorization of Food and Drug Administration-Allowed Investigational Device Exemptions

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c), devices fall into one of three classes. Also, under the new categorization process to assist CMS, the Food and Drug Administration assigns each device with a Food and Drug Administration-approved investigational device exemption to one of two categories. Category A refers to

experimental/investigational device exemptions, and Category B refers to nonexperimental/investigational device exemptions. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328). The following information presents the device number and category (A or B) for the third quarter, July through September 2002. (We inadvertently failed to include this

information in our December 27, 2002, quarterly issuances notice).

INVESTIGATIONAL DEVICE EXEMPTION NUMBERS, 3RD QUARTER 2002

IDE	Category
G000137	B
G002018	B
G010155	B

INVESTIGATIONAL DEVICE EXEMPTION
NUMBERS, 3RD QUARTER 2002—
Continued

IDE	Category
G010192	B
G010193	B
G010235	B
G010260	B
G010261	B
G010270	A
G010355	B
G020043	B
G020067	B
G020081	B
G020086	B
G020088	B
G020102	B
G020104	B
G020118	B
G020128	B
G020129	B
G020134	B
G020138	B
G020140	B
G020141	B
G020142	B
G020143	B
G020144	B
G020145	B
G020147	B
G020148	B
G020151	B
G020155	B
G020156	B
G020157	B
G020158	B
G020159	B
G020163	A
G020164	B
G020166	B
G020170	B
G020171	B
G020172	B
G020173	B
G020175	B
G020176	B
G020178	B
G020179	B
G020183	B
G020186	B
G020187	B
G020188	B
G020189	A
G020191	B
G020192	B
G020194	B
G020196	B
G020199	B
G020203	B
G020204	B
G020206	B
G020208	B
G020209	B
G020214	B
G020215	B
G020216	B
G020218	B
G090193	B
G910133	B

INVESTIGATIONAL DEVICE EXEMPTION
NUMBERS, 4TH QUARTER 2002

IDE	Category
G010035	B
G010268	B
G020020	B
G020035	B
G020053	B
G020064	B
G020160	B
G020182	B
G020185	A
G020193	B
G020211	B
G020223	B
G020224	B
G020227	B
G020228	B
G020229	B
G020230	A
G020232	B
G020233	B
G020234	A
G020238	B
G020241	A
G020244	B
G020249	B
G020250	B
G020254	B
G020255	B
G020258	B
G020260	B
G020263	B
G020269	B
G020270	B
G020271	A
G020272	B
G020275	B
G020276	B
G020277	B
G020281	B
G020283	B
G020284	B
G020285	A
G020287	B
G020288	B
G020289	B
G020291	B
G020295	B
G020296	B
G020297	B
G020300	B
G020303	B
G020304	B
G020309	B
G990155	B

[FR Doc. 03-7063 Filed 3-27-03; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND
HUMAN SERVICES

Centers for Medicare & Medicaid
Services

[CMS-1474-N]

**Medicare Program; Town Hall Meeting
on the Inpatient Rehabilitation Facility
Prospective Payment System**

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a town hall meeting to allow the public to discuss the inpatient rehabilitation facility (IRF) prospective payment system (PPS). Beneficiaries, providers, physicians, inpatient rehabilitation facilities staff, industry representatives, and other interested parties are invited to this meeting to present their views regarding the IRF PPS. The meeting is open to the public, but attendance is limited to space available.

DATES: *Meeting Date:* The town hall meeting announced in this notice will be held on Monday, May 19, 2003, from 10 a.m. to 1 p.m. (eastern daylight saving time).

ADDRESSES: The town hall meeting will be held in the auditorium at the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

FOR FURTHER INFORMATION CONTACT: August Nemec, 410-786-0612. You may also send inquiries about this meeting via e-mail to ANemec@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 2001, we published a final rule entitled "Medicare Program; Prospective Payment System for Inpatient Rehabilitation Facilities (CMS-1069-F)" in the **Federal Register** (66 FR 41316), that established a prospective payment system (PPS) for inpatient rehabilitation facilities (IRFs) as authorized under section 1886(j) of the Social Security Act (the Act). The IRF PPS regulations are codified at 42 CFR part 412, subpart P. In the August 7, 2001 final rule, we set forth per discharge Federal prospective payment rates for the fiscal year (FY) 2002 that provided payment for inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs) but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IRF PPS. The provisions of that final rule were effective for cost reporting

The following information presents the device number and category (A or B) for the fourth quarter, October through December 2002.

periods beginning on or after January 1, 2002. (On July 1, 2002, we published a correcting amendment to the final rule in the **Federal Register** (67 FR 44073). Any reference to the August 7, 2001 final rule in this proposed rule includes the provisions effective in the correcting amendment.)

Section 1886(j)(5) of the Act and § 412.628 of the regulations requires the Secretary to publish in the **Federal Register**, on or before August 1 of the preceding fiscal year, the classifications and weighting factors for the IRF case-mix groups (CMGs) and a description of the methodology and data used in computing the prospective payment rates for the upcoming fiscal year. On August 1, 2002, we published a notice in the **Federal Register** (67 FR 49928) to update the IRF Federal prospective payment rates from FY 2002 to FY 2003 using the methodology described in § 412.624 of the regulations. As stated in that notice, we used the same classifications and weighting factors for the IRF CMGs that were set forth in the August 7, 2001 final rule to update the IRF Federal prospective payment rates from FY 2002 to FY 2003. The FY 2003 Federal prospective payment rates are effective for discharges on or after October 1, 2002 and before October 1, 2003.

After implementing the IRF PPS on January 1, 2002 and through the first quarter of calendar year 2002, we held conference calls with the IRF industry. These conference calls were beneficial for our staff and the IRF industry to understand and address the issues and concerns of implementing this new PPS. Since the IRF PPS has been implemented for over one year, we believe that this town hall meeting will provide interested parties with the opportunity to discuss issues and concerns regarding the IRF PPS.

In the near future, we anticipate publishing a proposed rule to set forth proposed updated FY 2004 IRF prospective payment rates and to propose other changes to the IRF PPS. It is important to note that if the proposed rule is published before the IRF town hall meeting, statements and comments made or received during the town hall meeting will not be accepted and considered as official comments on the proposed rule. To be considered as official comments, the procedures described in the **DATES, ADDRESSES, and SUPPLEMENTARY INFORMATION** sections of the proposed rule must be followed.

II. Meeting Format

The meeting will begin with an overview of the goals of the meeting. The meeting moderator will be

introduced along with members of the CMS IRF PPS Panel. After a brief overview of the IRF PPS, the moderator will lead a discussion of the written statements received before the town hall meeting as described below. We have developed an agenda (to be posted on the CMS Web site discussed below) for the meeting consisting of the following aspects of the IRF PPS: (1) The IRF patient classification and payment systems; (2) the IRF patient assessment instrument; and (3) the requirements for a hospital or a unit of a hospital to be classified as an IRF.

Beginning on or about April 28, 2003, information about the IRF PPS town hall meeting will be posted at the following Web site address: www.cms.hhs.gov/providers/irfpps/default.asp. At this address, interested parties will find important information on the town hall meeting including an agenda for the meeting and handouts to be used during the discussions.

We will limit the time for participants to make formal statements according to the number of registered participants. Individuals who wish to make formal statements must contact August Nemec as soon as possible. Those individuals must subsequently submit their formal statement in writing so that it is received by CMS no later than 5 p.m., Monday, May 12, 2003. Send written submissions to: August Nemec, Division of Institutional Post Acute Care, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C5-06-27, Baltimore, Maryland 21244 or ANemec@cms.hhs.gov. If time permits, statements from individuals not registered to speak will be heard after individuals with scheduled statements.

III. Registration Instructions

The Division of Institutional Post Acute Care is coordinating meeting registration. While there is no registration fee, all individuals must register to attend. Because this meeting will be located on Federal property, for security reasons, any persons wishing to attend this meeting must register by writing or e-mailing the actual names of the attendees to August Nemec at least 72 hours in advance of the meeting date. Attendees must show photographic identification to the Federal Protective Service or Guard Service personnel before they will be permitted to enter the building. Individuals who have not registered in advance will not be allowed to enter the building to attend the meeting. The meeting is limited to registered persons, and seating capacity is limited to the first 250 registrants.

Individuals requiring sign language interpretation for the hearing impaired

or other special accommodations should contact August Nemec at least 10 days before the meeting.

Authority: Section 1886(j) of the Social Security Act (42 U.S.C. 1395ww(j)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 24, 2003.

Thomas A. Scully,
Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03-7495 Filed 3-27-03; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1230-N]

Medicare Program; Public Meetings in Calendar Year 2003 for New Durable Medical Equipment Coding and Payment Determinations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meetings.

SUMMARY: This notice announces the dates and location of public meetings to be held in calendar year 2003 to discuss our preliminary coding and payment determinations for new durable medical equipment. These meetings provide a forum for interested parties to make oral presentations and/or to submit written comments in response to preliminary coding and pricing recommendations for new durable medical equipment that have been submitted using the Healthcare Common Procedure Coding System coding modification process. Discussion is directed toward response to our specific preliminary recommendations, and will be limited to items on the new durable medical equipment public meeting agenda.

DATES: The public meetings are scheduled for Tuesday, June 24; Wednesday, June 25; and Thursday, June 26, 2003. Each meeting day will begin at 8 a.m. and end at 5 p.m., e.s.t. We have tentatively scheduled Friday, June 27, 2003 as an optional meeting date. A meeting will only be held on June 27 if the number of agenda items cannot be managed in three meeting days.

ADDRESSES: The public meetings will be held in the Centers for Medicare & Medicaid Services (CMS) Auditorium,

located at 7500 Security Boulevard, Baltimore, MD 21244.

Web site: Additional details regarding the public meeting process for new DME, along with information on how to register, and guidelines for an effective presentation will be posted at least one month before the first meeting date on the official HCPCS Web site, and can be accessed at <http://cms.hhs.gov/medicare/hcpcs/default.asp>.

Individuals who intend to provide a presentation at a public meeting for new DME should familiarize themselves with this information. This website also includes a description of the HCPCS coding process, along with a detailed explanation of the procedures used to make coding and payment determinations for DME and other items and services that are coded in the HCPCS.

A summary of each public meeting for new DME will be posted on the above website within one month after the meeting.

FOR FURTHER INFORMATION CONTACT:
Jennifer Carver, (410) 786-6610.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Congress passed the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), Pub. L. 106-554. Section 531(b) of BIPA mandated that we establish procedures that permit public consultation for coding and payment determinations for new DME under Medicare Part B of title XVIII of the Social Security Act (the Act). The procedures and public meetings announced in this notice for new DME are in response to the mandate of section 531(b) of BIPA.

Information regarding the establishment of the public meeting process for new durable medical equipment was published in the **Federal Register** at 66 FR 58743 on November 23, 2001.

II. Registration

Registration Procedures: Registration may be completed on-line at <http://cms.hhs.gov/medicare/hcpcs/default.asp>, or you may contact the DME Public Meeting Coordinator, Jennifer Carver at 410-786-6610, to register by phone. The following information must be provided when registering: name, company name and address, telephone and fax numbers, e-mail address and special needs information. Registrants must also indicate whether they are the "Primary Speaker" for an agenda item, designated by the entity that submitted the HCPCS

coding request. A CMS staff member will confirm your registration by mail, e-mail or fax.

Registration Deadline: Individuals must register for each date they plan to attend and/or provide a presentation. The deadline for registration for all of the meetings dates is Tuesday, June 10, 2003.

III. Presentations

Primary Speaker Presentations: The entity that submitted the HCPCS coding request for an item that appears on the Public Meeting agenda may designate one person to be the "Primary Speaker" and make a presentation at the meeting. We will post guidelines regarding the amount of time allotted to the speaker, as well as other presentation guidelines, on the official HCPCS website at least a month before the first public meeting in 2003 for new DME. Persons who have been designated to be a Primary Speaker must register to attend the meeting using the registration procedures described above and, at least 15 days before the meeting, contact the DME Public Meeting Coordinator, Jennifer Carver at 410-786-6610. At the time of registration, Primary Speakers must provide a brief, written statement regarding the nature of the information they intend to provide, and advise the meeting coordinator regarding needs for Audio/Visual Support. In order to avoid disruption of the meeting and ensure compatibility with our systems, tapes and disk files are tested and arranged in speaker sequence well in advance of the meeting. We will accommodate tapes and disk files that are received by the DME Public Meeting Coordinator 7 or more calendar days prior to the meeting. In addition, on the day of the meeting, Primary Speakers must provide a written summary of their comments to the DME Public Meeting Coordinator.

"5-Minute" Speaker Presentations: Meeting attendees will be permitted to sign up at the meeting, on a first-come, first-served basis, to make 5-minute presentations on individual agenda items. Based on the number of items on the agenda and the progress of the meeting, a determination will be made at the meeting by the meeting coordinator and the meeting moderator, regarding how many 5-Minute speakers can be accommodated. In order to offer the same opportunity to all attendees, there is no pre-registration for 5-Minute speakers. Attendees may sign-up only on the day of the meeting to do a 5-Minute presentation. They must provide their name, company name and address, contact information as specified on the sign-up sheet, and identify the specific agenda item that

will be addressed. On the day of the meeting, 5-Minute speakers must provide a written summary of their comments to the DME Public Meeting Coordinator.

Speaker Declaration: The Primary Speakers and the 5-Minute Speakers must declare, at the meeting as well as in their written summary, whether or not they have any financial involvement with the manufacturers or competitors of any items or services being discussed. This includes any payment, salary, remuneration, or benefit provided to the speaker by the manufacturer.

Written Comments from Meeting Attendees: We welcome written comments from persons in attendance at a public meeting, whether or not they had the opportunity to make an oral presentation. Written comments may be submitted at the meeting, or prior to the meeting via e-mail to <http://www.cms.hhs.gov/medicare/hcpcs> or via regular mail to the HCPCS Coordinator, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C5-08-27, Baltimore, MD 21244.

General Information

The meetings are held in a Federal government building; therefore, Federal measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. In order to gain access to the building and grounds, participants must bring a government issued photo identification and a copy of your confirmation of pre-registration for the meeting. Access may be denied to persons without proper identification.

Security measures also include inspection of vehicles, inside and out, at the entrance to the grounds. In addition, all persons entering the building must pass through a metal detector. All items brought to CMS, whether personal or for the purpose of demonstration or to support a presentation, are subject to inspection. CMS cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation.

Special Accommodations: Persons attending a meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance or accommodations, should provide such information upon registering for the meeting.

Each meeting day will begin at 8 a.m. and end at 5 p.m., e.s.t. Because it is impossible to anticipate, in advance of

the April 1, 2003 submission deadline, the nature and the number of coding requests that will be submitted for new DME, we can only estimate the amount of meeting time that will be needed, and we are unable to post a final agenda at this time. We may not need three full-day meetings. We will consider each meeting individually, and we may modify the meeting dates and times published in this notice. Final confirmation of meeting dates and times, and agenda items will be posted three weeks in advance of each scheduled meeting, on the official HCPCS Web site and can be accessed at <http://cms.hhs.gov/medicare/hcpcs/default.asp>.

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 42 U.S.C. 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 17, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03-7060 Filed 3-27-03; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N-0514]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Irradiation in the Production, Processing, and Handling of Food

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: Fax written comments on the information collection provisions by April 28, 2003.

ADDRESSES: The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to sshapiro@omb.eop.gov or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX 202-395-6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

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.

Irradiation in the Production, Processing, and Handling of Food—21 CFR Part 179 (OMB Control Number 0910-0186)—Extension

Under sections 201(s) and 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s) and 348), food irradiation is subject to regulation under

the food additive premarket approval provisions of the act. The regulations providing for uses of irradiation in the production, processing, and handling of food are found in part 179 (21 CFR part 179). To assure safe use of a radiation source, § 179.21(b)(1) requires that the label of sources bear appropriate and accurate information identifying the source of radiation and the maximum energy of radiation emitted by x-ray tube sources. Section 179.21(b)(2)(i) requires that the label or accompanying labeling bear adequate directions for installation and use. Section 179.25(e) requires that food processors who treat food with radiation make and retain, for 1 year past the expected shelf life of the products up to a maximum of 3 years, specified records relating to the irradiation process (e.g., the food treated, lot identification, scheduled process, etc.). The records required by § 179.25(e) are used by FDA inspectors to assess compliance with the regulation that establishes limits within which radiation may be safely used to treat food. The agency cannot ensure safe use without a method to assess compliance with the dose limits, and there are no practicable methods for analyzing most foods to determine whether they have been treated with ionizing radiation and are within the limitations set forth in part 179. Records inspection is the only way to determine whether firms are complying with the regulations for treatment of foods with ionizing radiation.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
179.25(e)	6	120	720	1	720

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of firms who process food using irradiation is extremely limited. FDA estimates that there are two irradiation plants whose business is devoted primarily (i.e., approximately 100 percent) to irradiation of food and other agricultural products. Four other firms also irradiate small quantities of food. FDA estimates that this irradiation accounts for no more than 10 percent of the business for each of these firms. Therefore, the average estimated burden is based on: Two facilities devoting 100

percent of their business (or 600 hours for recordkeeping annually) to food irradiation; four facilities devoting 10 percent of their business or 120 hours (4 x 30 hours) for recordkeeping annually to food irradiation.

No burden has been estimated for the labeling requirements in §§ 179.21(b)(2)(i) and (b)(2)(ii) and 179.26(c) because the information to be disclosed is information that has been supplied by FDA. Under 5 CFR 1320.3(c)(2), the public disclosure of

information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information.

Dated: March 14, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03-7476 Filed 3-27-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Intent To Prepare an Environmental Impact Statement for an Integrated Research Facility at Fort Detrick, Frederick, MD

AGENCY: National Institutes of Health (NIH), DHHS.

ACTION: Notice of intent to prepare an environmental impact statement for an integrated research facility at Fort Detrick, Frederick, Maryland.

SUMMARY: The Department of Health and Human Services (DHHS), National Institutes of Health (NIH), announces its intent to prepare an environmental impact statement (EIS) to evaluate a proposed new Integrated Research Facility for the NIH, at Fort Detrick in Frederick, Maryland. This EIS is being prepared and considered in accordance with requirements of the National Environmental Policy Act (NEPA) of 1969, regulations of the President's Council on Environmental Quality (40 CFR parts 1500–1508), NEPA Compliance Procedures of the DHHS General Administration Manual, Part 30 (Environmental Protection), 25 February 2000, and Army Regulation 200–2, Environmental Analysis of Army Actions (32 CFR 651), 29 March 2002.

COOPERATING AGENCIES: The U.S. Army, as owner of the site of the proposed Integrated Research Facility, is a cooperating agency in this EIS.

SUPPLEMENTARY INFORMATION: The National Institute of Allergies and Infectious Diseases (NIAID), a component of the NIH, conducts and supports research of infectious diseases and the human immune system, with an emphasis on emerging and re-emerging diseases such as HIV/AIDS and other sexually transmitted diseases, tuberculosis, malaria, asthma, and allergies. Its resources and expertise have been applied to studying organisms that might be used as agents of bioterrorism and the response of the human immune system to those organisms. This knowledge will be used to develop new and improved diagnostic tests, vaccines, and therapies to protect civilians.

Since fall 2001, NIAID has greatly accelerated its biodefense research program. Achievement of the research goals requires the construction and certification of biological containment laboratories, with facilities and procedures for handling potentially lethal agents. Equally important is the need to minimize potential threats from

infectious agents to laboratory and clinical personnel working within these facilities and to adjacent communities. The Federal Government has approved \$105 million to fund a facility for biodefense and emerging infectious diseases research on Fort Detrick in Frederick, Maryland, as a crucial element of this NIH construction initiative.

The proposed action is construction and operation by NIH of a new building comprised of laboratories designed and constructed to Biosafety Levels –2, –3, and –4 standards, that will enable NIAID researchers to study disease-causing microbes that may be used as agents of terrorism. The proposed new facility will have imaging capabilities and will include administrative support offices. It will occupy an approximately 6-acre plot near offices, laboratory facilities, and supporting services of the U.S. Army Medical Research Institute of Infectious Diseases (USAMRIID), in accordance with a Congressional mandate. NIAID and USAMRIID have worked together for many years on developing new vaccines and diagnostic procedures in biodefense, as well as on HIV/AIDS research. Scientists of both agencies have had extensive experience with research in BSL–3 and –4 laboratories.

Significant issues to be analyzed in the EIS will include safety of laboratory operations; public health and safety; handling, collection, treatment, and disposal of biomedical research waste related to the proposal; and analysis of other risks, as well as concerns for pollution prevention and impacts of the proposed action on air quality, biological resources, cultural resources, water resources, land use, and socioeconomic resources. Several alternatives will be considered, including siting the new facility at another location on the grounds of Fort Detrick and a No-Action alternative, under which the new facility would not be built. Additional alternatives may be identified in the Public Scoping process.

Public Participation: The DHHS and the U.S. Army invite full public participation to promote open communication and better decision-making. All interested persons and organizations, including minority, low-income, disadvantaged, and Native American groups, are urged to participate in this NEPA environmental analysis process. Assistance will be provided upon request to anyone having difficulty with learning how to participate.

To ensure that the full range of issues related to this proposed action and the scope of this EIS are addressed, oral and

written comments are invited from all interested parties, including appropriate Federal, State, and local agencies, and private organizations and citizens. Pursuant to this, a Public Scoping meeting will be held on Wednesday, April 16, 2003, at 7 p.m. at the Whittier Elementary School, 2400 Whittier Drive, Frederick, Maryland.

Comments on the scope of the EIS for the proposed project should be received no later than April 28, 2003. Comments and questions should be directed to the address listed below. Public comments are welcomed anytime throughout the NEPA process and should be directed to the address listed below. Additional formal opportunities for public participation after the Public Scoping are tentatively scheduled as follows:

Review and Comment on the Draft EIS (including a public meeting): August 2003.

Review of the Final EIS: December 2003.

Notices of availability for the Draft EIS, Final EIS, and Record of Decision will be provided through direct mail, the **Federal Register**, and other media. Notifications also will be sent to Federal, State, and local agencies and persons and organizations that submit comments or questions. Precise schedules and locations for public meetings will be announced in the local news media. Interested individuals and organizations may request to be included on the mailing list for public distribution of meeting announcements and associated documents.

FOR FURTHER INFORMATION CONTACT: Ron Wilson, Office of Facilities Planning, National Institutes of Health, 31 Center Drive, Room 3B44, MSC 2162, Bethesda, MD 20892–2162; by telephone (301) 496–5037; fax (301) 402–0017; or e-mail wilson@ors.od.nih.gov.

Authority: 42 U.S.C. 4321–4347 (National Environmental Policy Act).

Dated: March 24, 2003.

Stephen A. Ficca,

*Associate Director for Research Services,
National Institutes of Health.*

[FR Doc. 03–7404 Filed 3–25–03; 9:42 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice

is hereby given of a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Director's Council of Public Representatives.

Date: April 24, 2003.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: Among the topics proposed for discussion are: (1) The NIH Director's Report; (2) update on the NIH Director's Road Map Initiative; (3) update on the Government Performance and Results Act (GPRA) implementation; and (4) update on the NIH Communications Plan.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Jennifer E. Gorman Vetter, NIH Public Liaison/COPR Coordinator, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, (301) 435-4448, gormanj@od.nih.gov.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home Page: <http://www.nih.gov/about/publicliaison/index.html>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Background; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-7407 Filed 3-27-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the National Advisory Research Resources Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date: May 15, 2003.

Open: 8:30 a.m. to 2:45 p.m.

Agenda: Report of Center Director and other issues.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 10, Bethesda, MD 20892.

Closed: 2:45 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 10, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, Ph.D., Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301-496-6023.

Information is also available on the Institute's/Center's Home Page: <http://www.ncrr.nih.gov/newspub/minutes.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: March 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-7410 Filed 3-27-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, HIV and Aging.

Date: April 11, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Fred Altman, Ph.D., Scientific Review Administrator, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6220, MSC 9621, Bethesda, MD 20892-9621, 301-443-8962.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-7405 Filed 3-27-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Assessment of Depression RFA.

Date: April 15, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Susan M. Matthews, BA, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6134, MSC 9607, Bethesda, MD 20892-9607, 301-443-5047.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-7406 Filed 3-27-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Research for Biodefense.

Date: April 17-18, 2003.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Terrace Room, Chevy Chase, MD 20815.

Contact Person: Geetha P Bansal, Ph.D., Scientific Review Administrator, National Institute of Allergy and Infectious Disease, National Institute of Health, 6700-B Rockledge Drive, Room 2213, Bethesda, MD 20892-7616, (301) 402-5658, gbansal@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-7409 Filed 3-27-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, RFA NR-03-003 Research to Improve Care for Dying Children and Their Families.

Date: April 1, 2003.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, 6701 Democracy Plaza, Room 710, Bethesda, MD 20817.

Contact Person: John E. Richters, Ph.D., Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd. Room 715, Bethesda, MD 20817, (301) 594-5971, jrichters@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: March 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-7411 Filed 3-27-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Center for Scientific Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Committee, Workgroup.

Date: May 12-13, 2003.

Time: 8:30 a.m. to 1 p.m.

Agenda: Discussion of activities to evaluate organization and function of the Center for Scientific Review Process.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 6087, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Deputy Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3016, MSC 7776, Bethesda, MD 20892, (301) 435-1114.

Information is also available on the Institute's/Center's Home Page: <http://www.csr.nih.gov/drgac/drgac.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7408 Filed 3–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Exploratory Method Development.

Date: March 28, 2003.

Time: 8 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Lee S. Mann, Ph.D., JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 8186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1, VISC (90): The Retinal Nerve Fiber Layer and Glaucoma.

Date: March 28, 2003.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Michael H. Chaitin, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, chaitinm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mother-Infant Interaction Micro-Studies.

Date: April 2, 2003.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levin@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BDCN 4 04M: Member Conflict: Biology and Expression of Neurotransmitter Receptors.

Date: April 3, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 5184, Bethesda, MD 20892, (telephone conference call).

Contact Person: Jay Joshi, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, HSP and HSP-Based Therapy.

Date: April 3, 2003.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Sharon K. Gubanich, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict.

Date: April 4, 2003.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Eduardo A. Montalvo, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG PBC (4) Glycobiology.

Date: April 4, 2003.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Zakir Bengali, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892. (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Family Studies (EDC 1 MESA study member conflict).

Date: April 7, 2003.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, hardyan@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Rehabilitation SBIR Review.

Date: April 7–8, 2003.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology: p53 and EAE.

Date: April 7, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Stephen M. Nigida, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435-3565.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biostatistical Methods Member Conflict.

Date: April 7, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Charles N. Rafferty, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, 301-435-3562, raffertc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Contact Person: Center for Scientific Review Special Emphasis Panel, AIDS Opportunistic Infections SEP.

Date: April 7, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eduardo A. Montalvo, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435-1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Membrane Events-SEP.

Date: April 8, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael A. Lang, Ph.D., Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435-1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Identification of Biowarfare Agents.

Date: April 8, 2003.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marian Wachtel, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, (301) 435-1148, wachtelm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Integrative, Functional & Cognitive Neurosciences Fellowships.

Date: April 8, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C. Debbas, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435-1018, debbasg@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ECS 50: CVS Bioengineering Research Partnership.

Date: April 9, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435-1210.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SNEM-1 Cancer-Related R21 Applications.

Date: April 9, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435-0681, schwarte@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Synapse Formation.

Date: April 9, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanne T. Fujii, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435-1178, fujij@drj.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: American Sign Language.

Date: April 10, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Karen Sirocco, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301-435-0676, siroccok@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 HEM-1 (04)M: Biomechanics of Heart Development.

Date: April 10, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert T. Su, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435-1195, sur@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mechanisms of PDT Therapy.

Date: April 10, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharon K. Gubanich, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435-1767.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Health Services Research (SNEM 4 members).

Date: April 10, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435-0695, hardyan@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology: Adhesion Molecules.

Date: April 11, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Stephen M. Nigida, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435-3565.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-7412 Filed 3-27-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443-7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Opioid Drugs in Maintenance and Detoxification Treatment of Opioid Dependence—42 CFR part 8 (OMB No. 0930-0206; Extension, no change)—This regulation establishes a certification program managed by SAMHSA's Center for Substance Abuse Treatment (CSAT). The regulation requires that Opioid

Treatment Programs (OTPs) be certified. "Certification" is the process by which SAMHSA determines that an OTP is qualified to provide opioid treatment under the Federal opioid treatment standards established by the Secretary of Health and Human Services. To become certified, an OTP must be accredited by a SAMHSA-approved accreditation body. The regulation also provides standards for such services as individualized treatment planning, increased medical supervision, and assessment of patient outcomes. This submission seeks continued approval of the information collection requirements in the regulation and of the forms used in implementing the regulation.

SAMHSA currently has approval for the Application for Certification to Use Opioid Drugs in a Treatment Program Under 42 CFR 8.11 (Form SMA-162); the Application for Approval as Accreditation Body Under 42 CFR 8.3(b) (Form SMA-163); and the Exception Request and Record of Justification Under 42 CFR 8.12 (Form SMA-168), which may be used on a voluntary basis by physicians when there is a patient care situation in which the physician must make a treatment decision that differs from the treatment regimen required by the regulation. Form SMA-168 is a simplified, standardized form to facilitate the documentation, request, and approval process for exceptions.

The tables that follow summarize the annual reporting burden associated with the regulation, including burden associated with the forms.

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR ACCREDITATION BODIES

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Hours/ response	Total hours
8.3(b)(1-11)	Initial approval (SMA-163)	2	1	3.0	6.0
8.3(c)	Renewal of approval (SMA-163)	2	1	1.0	2.0
8.3(e)	Relinquishment notification	1	1	0.5	0.5
8.3(f)(2)	Non-renewal notification to accredited OTP's	1	90	0.1	9.0
8.4(b)(1)(ii)	Notification to SAMHSA for seriously noncompliant programs.	2	2	1.0	4.0
8.4 (b)(1)(iii)	Notification to OTP for serious noncompliance	2	2	1.0	4.0
8.4(d)(1)	General documents and information to SAMHSA upon request.	7	4	0.5	14.0
8.4(d)(2)	Accreditation survey to SAMHSA upon request	7	53	0.02	7.42
8.4(d)(3)	List of surveys, surveyors to SAMHSA upon request.	7	6	0.2	8.4
8.4(d)(4)	Report of less than full accreditation to SAMHSA.	7	2.5	0.5	8.75
8.4(d)(5)	Summaries of Inspections	7	50	0.5	175.0
8.4(e)	Notifications of Complaints	7	5	0.5	17.5
8.6(a)(2) and (b)(3)	Revocation notification to Accredited OTP's	1	50	0.3	15.0

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR ACCREDITATION BODIES—Continued

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Hours/ response	Total hours
8.6(b)	Submission of 90-day Corrective plan to SAMHSA.	1	1	10	10.0
8.6(b)(1)	Notification to accredited OTP's of Probationary Status.	1	50	0.3	15.0
Total		7			297

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR OPIOID TREATMENT PROGRAMS

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Hours/ response	Total hours
8.11(b)	New programs approval (SMA-162)	75	1	1.50	112.50
8.11(b)	Renewal of approval (SMA-162)	350	1	1.00	350.00
8.11(b)	Relocation of Program (SMA-162)	35	1	1.17	40.95
8.11(d)	Application for transitional certification (SMA-162)*.	7	1	1.58	11.06
8.11(e)(1)	Application for provisional certification	75	1	1	75.00
8.11(e)(2)	Application for extension of provisional certification.	30	1	.25	7.50
8.11(f)(5)	Notification of sponsor or medical director change (SMA-162).	60	1	.2	12.00
8.11(g)(2)	Documentation to SAMHSA for interim maintenance.	1	1	1	1.00
8.11(h)	Request to SAMHSA for Exemption from 8.11 and 8.12 (SMA-168).	1,100	6	.152	1003.2
8.11(i)(1)	Notification to SAMHSA Before Establishing Medication Units (SMA-162).	10	1	.25	2.5
8.12(j)(2)	Notification to State Health Officer When Patient Begins Interim Maintenance.	1	20	.33	6.6
8.24	Contents of Appellant Request for Review of Suspension.	2	1	.25	.50
8.25(a)	Informal Review Request	2	1	1.00	2.00
8.26(a)	Appellant's Review File and Written Statement ..	2	1	5.00	10.00
8.28(a)	Appellant's Request for Expedited Review	2	1	1.00	2.00
8.28(c)	Appellant Review File and Written Statement	2	1	5.00	10.00
Total		1,100			1,647

* This is a one-time requirement that will be fully met during the first three years of approval for the final rule.

SAMHSA believes that the recordkeeping requirements in the regulation are customary and usual practices within the medical and rehabilitative communities and has not calculated a response burden for them. The recordkeeping requirements set forth in 42 CFR 8.4, 8.11 and 8.12 include maintenance of the following: 5-year retention by accreditation bodies of certain records pertaining to accreditation; documentation by an OTP of the following: A patient's medical examination when admitted to treatment, A patient's history, a treatment plan, any prenatal support provided the patient, justification of unusually large initial doses, changes in a patient's dosage schedule, justification of unusually large daily doses, the rationale for decreasing a patient's clinic attendance, and documentation of physiologic dependence.

The rule also includes requirements that OTPs and accreditation organizations disclose information. For example, 42 CFR 8.12(e)(1) requires that

a physician explain the facts concerning the use of opioid drug treatment to each patient. This type of disclosure is considered to be consistent with the common medical practice and is not considered an additional burden. Further, the rule requires, under § 8.4(i)(1) that accreditation organizations shall make public their fee structure; this type of disclosure is standard business practice and is not considered a burden.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16-105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 24, 2003.
Richard Kopanda,
Executive Officer, Substance Abuse and Mental Health Services Administration.
 [FR Doc. 03-7458 Filed 3-27-03; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4809-N-13]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or

call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 19, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03-7109 Filed 3-27-03; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4456-N-26]

Privacy Act of 1974; Proposed Amendment of Routine Uses Applicable to Systems of Records

AGENCY: Office of Inspector General, HUD.

ACTION: Notification of proposed amendment of routine uses applicable to systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Inspector General (OIG) is giving notice that it proposes to amend the routine uses applicable to its systems of records, which are published at 57 FR 25069 (June 12, 1992) and 65 FR 50904 (August 21, 2000). The OIG proposes to add a new routine use to the routine uses currently applicable to OIG's systems of records to permit disclosure of five systems of records for purposes of internal and external peer reviews of the Office of Audit and Office of Investigations, specifically HUD/OIG-1, Investigative Files of the Office of Inspector General, HUD/OIG-2, Hotline Complaint Files of the Office of Inspector General; HUD/OIG-3, Name Indices System of the Office of Inspector General, HUD/OIG-5, AutoAudit of the Office of Inspector General; and HUD/OIG-6, AutoInvestigation of the Office of Inspector General. This notice also proposes adding a new routine use to the same five systems of records to allow disclosure of these records to the President's Council on Integrity and Efficiency (PCIE) and other federal

agencies, when these entities or the OIG conducts an audit or investigation pursuant to Executive Order 12993.

DATES: *Effective date:* This proposal shall become effective without further notice on April 28, 2003, unless comments are received on or before that date which would result in a contrary determination.

Comment Due Date: April 28, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. *An original and four copies of comments should be submitted.* Facsimile comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For Privacy Act information: Jeanette Smith, Departmental Privacy Act Officer, telephone number (202) 708-2374. For OIG-related information: Bryan Saddler, Counsel to the Inspector General, Office of Inspector General, telephone number (202) 708-1613. (These are not toll free numbers). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1-800-877-8339 (Federal Information Relay Services).

SUPPLEMENTARY INFORMATION: The OIG, pursuant to the Privacy Act of 1974, currently maintains six systems of records: (1) Investigative Files of the Office of Inspector General (HUD/OIG-1); (2) Hotline Complaint Files of the Office of Inspector General (HUD/OIG-2); (3) Name Indices System of the Office of Inspector General (HUD/OIG-3); (4) Independent Auditor Monitoring Files of the Office of Inspector General (HUD/OIG-4); (5) AutoAudit of the Office of Inspector General (HUD/OIG-5); and (6) AutoInvestigation of the Office of Inspector General (HUD/OIG-6). The notices for these systems of records were last published on June 12, 1992 (57 FR 25069) and August 21, 2000 (65 FR 50904). The additional two routine uses being proposed will permit disclosure to those persons involved in conducting and reviewing external and internal peer reviews of the Office of Audit and the Office of Investigations, the PCIE, and other authorized Federal agencies when conducting investigations or audits pursuant to Executive Order 12993.

Recent legislation enacted as part of the Department of Homeland Security Act, specifically, subsection (7) of that Act reads as follows: "To ensure the proper exercise of the law enforcement powers authorized by this subsection, the OIG described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that established the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General".

OIG proposes a routine use that will allow the disclosure of information to authorized officials within OIG, the PCIE, the Department of Justice (DOJ), and the Federal Bureau of Investigation, as necessary, for the purpose of conducting qualitative assessment reviews of the OIG's investigative operations to ensure that the adequate internal and management procedures are maintained. A similar routine use is proposed for the Office of Audit records, which is subject to a recurring (every three year) external peer review required by the Government Accounting Standards, para. 3.33, and the PCIE. While these disclosures could be justified otherwise, it is appropriate that formal notice be provided.

An additional new routine use is proposed to enable OIG to assist other OIG's with internal audits or investigations required by the PCIE under Executive Order 12993, which cannot or should not be performed by the staff of a particular OIG that would normally conduct the audit or investigation and to allow reports to be reviewed by the PCIE regarding actions taken with respect to these audits or investigations. This routine use will allow the OIG to conduct assigned audits or investigations under Executive Order 12993 and to report its findings and recommendations and actions taken to the PCIE. It will also allow release of information to other agencies conducting internal audits of OIG.

Again, while such releases may be otherwise justified, it is appropriate that a formal notice be provided.

The texts of the new routine uses are printed below. All other aspects of OIG's systems of records remain unchanged and are as published at 57 FR 25069 and 65 FR 50904.

Section 552a(e)(4) and (11) of title 5, United States Code, provides that the public be afforded a 30-day period in which to comment on these revisions to OIG's existing record systems. Further, a report of the OIG's intention to amend the routine uses applicable to its six existing systems of records has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of Appendix I of OMB Circular A-130, which is entitled "Federal Agency Responsibilities for Maintaining Records About Individuals" (50 FR 52730 (Dec. 24, 1985)).

HUD/OIG-1

SYSTEM NAME:

Investigative Files of the Office of Inspector General.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, state, or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking action to recover money or property, where such recovery serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative

proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate state boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate state board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

8. Records may be disclosed to persons engaged in conducting and reviewing internal and external peer reviews of OIG to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization.

9. In the event that these records respond to an audit, investigation or review, which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the PCIE pursuant to Executive Order 12993, the records may be disclosed to the PCIE and other federal agencies, as necessary.

* * * * *

HUD/OIG-2

SYSTEM NAME:

Hotline Complaint Files of the Office of Inspector General.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, state, or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing

or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking action to recover money or property, where such recovery serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate state boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate state board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

8. Records may be disclosed to persons engaged in conducting and reviewing internal and external peer reviews of OIG to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization.

9. In the event that these records respond to an audit, investigation or review, which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the PCIE pursuant to Executive Order 12993, the records may be disclosed to the PCIE and other federal agencies, as necessary.

* * * * *

HUD/OIG-3

SYSTEM NAME:

Name Indices System of the Office of Inspector General.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, state, or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking action to recover money or property, where such recovery serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate state boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate state board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

8. Records may be disclosed to persons engaged in conducting and reviewing internal and external peer reviews of OIG to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization.

9. In the event that these records respond to an audit, investigation or review, which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the PCIE pursuant to Executive Order 12993, the records may be disclosed to the PCIE and other federal agencies, as necessary.

* * * * *

HUD/OIG-5**SYSTEM NAME:**

AutoAudit of the Office of Inspector General.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, state, or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking action to recover money or property, where such recovery serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate state boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings

to an appropriate state board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

8. Records may be disclosed to persons engaged in conducting and reviewing internal and external peer reviews of OIG to ensure auditing standards applicable to Government audits by the Comptroller General of the United States are applied and followed.

9. In the event that these records respond to an audit, investigation or review, which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the PCIE pursuant to Executive Order 12993, the records may be disclosed to the PCIE and other federal agencies, as necessary.

* * * * *

HUD/OIG-6**SYSTEM NAME:**

AutoInvestigation of the Office of Inspector General.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, state, or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule, or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking action to recover money or property, where such recovery serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the

litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate state boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate state board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

8. Records may be disclosed to persons engaged in conducting and reviewing internal and external peer reviews of OIG to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization.

9. In the event that these records respond to an audit, investigation or review, which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the PCIE pursuant to Executive Order 12993, the records may be disclosed to the PCIE and other federal agencies, as necessary.

Dated: March 21, 2003.

Kenneth M. Donohue, Sr.,
Inspector General.

[FR Doc. 03-7415 Filed 3-27-03; 8:45 am]

BILLING CODE 4210-78-P

DEPARTMENT OF THE INTERIOR

Notice of Availability of Federal Agency Work Plans and Reports for the Klamath River Basin

AGENCY: Klamath River Basin Federal Working Group.

ACTION: Notice of availability.

SUMMARY: The Klamath River Basin Federal Working Group (KRBF) is notifying the public of the availability of Federal agency work plans and reports of the three departments and their respective agencies/bureaus for the Klamath River Basin. These work plans and reports are intended to communicate to the public the scope of

work underway by these departments on federal activities in the Klamath River Basin. These documents are not intended to be detailed guidelines, schedules, funding documents, or project descriptions.

Work plans and reports for the Klamath River Basin are available for the following agencies.

- The Department of Agriculture, which includes work under the Natural Resources Conservation Service (NRCS), and the Forest Service (FS);
- The Department of the Interior, which includes work under the Bureau of Reclamation (BOR), Fish and Wildlife Service (FWS), Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and U.S. Geological Survey (USGS); and
- The Department of Commerce, which includes work under the National Marine Fisheries Service (NMFS).

These agency documents are available on the Web and can be accessed from one site: <http://www.doi.gov/klamath>

Further information on each agency work plan or report can be obtained from contacts listed below and listed on the Web sites of each agency.

Agency documents will be modified as changes occur. Each agency will make its modified work plans or reports available on the Web as they become available.

ADDRESSES: Address all requests for information on the work plans to the responsible agency:

- Natural Resources Conservation Service, Attn: State Conservationist—OR, 101 SW Main, Suite 1300, Portland, OR 97204 or State Conservationist—CA 430 G Street, Suite 4164, Davis, CA 95616-2890.
- Forest Service, Fremont-Winema National Forests, Attn: Natural Resources Staff, 1301 South G. St., Lakeview, OR 97630; or Forest Service, Shasta-Trinity, and Six Rivers National Forests, Natural Resources Staff, Attn: Klamath, 1312 Fairlane Road, Yreka, CA 96097.
- National Marine Fisheries Service, Chief, Endangered Species Division, 1315 East-West Hwy, Silver Spring, MD 20910.
- Department of the Interior, Attn: Director, Office of Communications, 1849 C Street, NW., Room 6213, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Eric Ruff, Director, Office of Communications, Department of the Interior, at (202) 208-3752; fax (202) 208-5133, e-mail Eric_Ruff@ios.doi.gov.

SUPPLEMENTARY INFORMATION: The President's Klamath River Basin Federal Working Group was established by

Presidential Memo on March 1, 2002. The Working Group was created to advise the President on immediate steps and long-term solutions to enhance water quality and quantity and to address other complex issues in the Klamath River Basin. The Working Group consists of: the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, and the Chairman of the Council of Environmental Quality.

The Federal agency work plans and reports are developed in a variety of ways, using a variety of planning and other procedures. Descriptions of these documents and procedures are provided below. Means for receiving copies of each work plan or report are listed below. Copies are available on the Web, by phone and mail, and in public offices.

Department of Agriculture Natural Resources Conservation Service (NRCS)

The Work Plan for Adaptive Management, Klamath River Basin, Oregon & California, is designed to be used by NRCS and conservation partners, state and local field staffs, private consultants, landowners/operators, tribal representatives, and others that will be developing or assisting in the development of a comprehensive basin plan. Building on this basin plan; on-farm individual resource management plans, and other documents will be developed to guide the design and implementation of conservation practices to mitigate the impacts of drought on agriculture in the Klamath River Basin.

The Work Plan is a preliminary estimate of NRCS activities over the next five years in the Klamath Basin. The Work Plan includes an adaptive management approach to allow flexibility to respond to change as more information and resources become available such as funding, scientific assessments, impacts of practices to be used, and land-owner objectives. The Work Plan could change dramatically because of these and many more factors.

This Work Plan is based on a rapid assessment of the basin including its present and future natural resource conditions, conservation practices currently installed, future conservation practices and their costs, practice effects, and sources of funds. The work plan contains estimates of funds to be available in FY 2003 through the Farm Bill and other sources along with estimates of outcomes.

The Work Plan describes recent accomplishments, how progress is measured, basin-wide conservation needs and a planning process, and on-

farm planning and implementation using anticipated funds. The rapid assessment of the basin will be completed in June 2003.

The Work Plan will be changed based on a final analysis of the rapid assessment information and after funding allowances have been issued to the NRCS state offices from the FY 2003 appropriations. A more detailed description of NRCS activities over the next five years will be prepared early in Phase 2 of the Work Plan. During Phase 2, a Basin Team will be assembled, information will be analyzed from the sub-basin Rapid Assessments, more precise estimates will be made of land-owner willingness to participate, and a basin-wide planning effort will be established with state and other federal agencies, conservation and irrigation districts, and interested stake holders.

Department of Agriculture Forest Service

The FS Work Plan for the Upper Klamath River Basin, Oregon, and Middle and Lower Klamath River Basin, California, display past, present, and future projects which will enhance and restore the functioning of the basin ecosystem. The plan includes watershed level projects and plans as well local projects designed to achieve the objectives. Web links are included where available that will give the reader additional information for each project.

The Work Plan displays current activities as well as future projects that are in the planning stage. As planning proceeds, changes will be made based on the availability of funds, scientific assessments, and environmental assessments. Similar projects are expected to be implemented in the future.

The Work Plan describes recent accomplishments as well as planned activities. The plan will be changed annually as wider area assessments and plans are developed with specific proposed actions. The planning will involve state and other federal agencies, the affected Tribes, and interested stakeholders.

Department of the Interior

The Department of the Interior has summarized its work on Klamath water, habitat and species issues in two documents. The first of these is titled, "Summary of Ongoing and Planned Work of the Department of the Interior Related to the Klamath River Basin." That document summarizes ongoing and planned work of the five Interior bureaus—FWS, BOR, BIA, BLM, and USGS—primarily involved in such work. The document highlights two key

planning efforts underway—the development of a Klamath Basin Conservation Implementation Plan led by the BOR and an aquatic habitat restoration scenario being prepared by the FWS. The summary also discusses Habitat Conservation Plan initiatives, Environmental Impact Statement work underway, the Trinity River restoration initiative, the development of a water bank for the Klamath Irrigation Project, habitat restoration, water leasing, and water storage initiatives in the Wood River valley, work on water-right claims, groundwater studies in the upper Klamath River basin, and participation in the Federal licensing process for PacifiCorp's Klamath River basin hydropower facilities.

The second document is titled, "Klamath Basin—Summary of Recent Federal Government Activities." This document summarizes work that has been conducted over the past several years—much of which is continuing today—dealing with the basin's difficult and interrelated water, habitat and species issues. The summary paper highlights initiatives dealing with water resources, land management practices, salmon enhancement, fish and wildlife habitat restoration, research, monitoring and assessment, Endangered Species Act responsibilities, and community outreach.

Department of Commerce National Oceanic and Atmospheric Administration Fisheries

The report on Past, Present and Future Activities Being Conducted in the Klamath River Basin Related to the Protection and Recovery of Fish and Their Habitat describes NOAA Fisheries involvement in a broad range of activities in the Klamath Basin under the authorities of the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act), and other federal statutes. Through these statutes, NOAA Fisheries endeavors to protect and recover fish populations under their jurisdiction. NOAA Fisheries also administers grants to state, tribal and local entities in the Klamath River basin for salmon restoration and watershed improvement activities. NOAA Fisheries activities in the basin principally occur in the lower Klamath Basin, where anadromous species occur. However, NOAA Fisheries does administer grants to the State of Oregon for watershed improvements in the upper Klamath River basin, which in turn benefit anadromous species in the lower basin. The report summarizes NOAA Fisheries' primary activities in the

Klamath Basin that have occurred over the past five years as well as those activities that will occur into the future. It is intended to inform the user of the involvement of NOAA Fisheries in a variety of activities as they relate to anadromous fish in the basin. The report will be updated as projects and funding levels evolve over the next five years.

Signed at Washington, DC, on March 25, 2003.

Gale A. Norton,

Secretary of the Interior and Chairman of the President's Klamath River Basin Federal Working Group.

[FR Doc. 03-7513 Filed 3-27-03; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for the Alamosa and Monte Vista National Wildlife Refuge Complex, Alamosa, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces that a Draft Comprehensive Conservation Plan and Environmental Assessment (CCP/EA) for the Alamosa and Monte Vista National Wildlife Refuge Complex is available for review and comment. This CCP/EA, prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997 and the National Environmental Policy Act of 1969, describes how the U.S. Fish and Wildlife Service intends to manage the Complex for the next 15 years. Also available is a Spanish version Summary of the Draft Comprehensive Conservation Plan and Environmental Assessment.

DATES: Please submit comments on the Draft CCP/EA on or before April 28, 2003.

ADDRESSES: Comments on the Draft CCP/EA should be addressed to: Adam Misztal, Planning Team Leader, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225-0486. Comments may also be submitted via electronic mail to: adam_misztal@fws.gov.

FOR FURTHER INFORMATION CONTACT: Adam Misztal, Planning Team Leader, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225-0486; (303) 236-8145 ext.

607; fax (303) 236-4792 or Mike Blenden, Complex Manager, Alamosa/Monte Vista National Wildlife Refuge Complex, U.S. Fish and Wildlife Service Admin. Building, 9383 El Rancho Lane, Alamosa, CO 81101; (719) 589-4021; fax (719) 587-0595.

SUPPLEMENTARY INFORMATION:

Availability of Documents: Copies of the Draft CCP/EA or Spanish version Summary may be obtained by writing to: Adam Misztal, Planning Team Leader, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225-0486. The Draft CCP/EA will also be available for viewing and downloading online at <http://mountain-prairie.fws.gov/planning/>.

Background: Alamosa and Monte Vista National Wildlife Refuges were established under the authority of the Migratory Bird Conservation Act “* * * for use as inviolate sanctuaries, or for any other management purpose, for migratory birds.” The purpose for managing habitats on the Alamosa and Monte Vista National Wildlife Refuge (the Complex) is to provide a biologically diverse area that complements the San Luis Valley (SLV) ecosystem.

Ten different plant communities/habitat types exist on the Complex: upland shrub, tall-emergent, short-emergent, saltgrass, short grass, shallow seasonal wetland, semipermanent wetland, riparian, riverine, and agriculture. These habitats support a variety of mammals, reptiles, amphibians, and birds. Mammals include coyote, red fox, black bear, mountain lion, bobcat, elk, mule deer, pronghorn, raccoon, mink, American badger, and other small mammals. Birds commonly seen on these Refuges include numerous waterfowl species, including 10 that nest on the Complex: mallard, gadwall, cinnamon, green-winged and blue-winged teal, northern pintail, northern shoveler, American wigeon, redheads, and ruddy ducks, and one species of goose (Canada). The Monte Vista NWR (MVNWR) has one of the highest densities of nesting waterfowl in the continent (Gilbert *et al.* 1996). On average, 15,000 ducks are produced on MVNWR annually, which constitutes a major contribution to the State's population and, subsequently, to the Central Flyway's duck population.

Other birds using the Complex include great blue heron, little blue heron, snowy and cattle egret, sandhill crane, northern harrier, Swainson's hawk, ring-necked pheasant, Ross' goose, black-bellied plover, greater yellowlegs, willet, and Wilson's phalarope. Two endangered species, the

whooping crane and southwestern willow flycatcher, and one threatened species, the bald eagle, utilize the Complex. In addition, five species of management concern to the U.S. Fish and Wildlife Service's National Migratory Bird Office also use the Complex: American bittern, black tern, burrowing owl, ferruginous hawk, and white-faced ibis.

The Draft CCP/EA identifies and evaluates two alternatives for managing the Alamosa and Monte Vista National Wildlife Refuges in the San Luis Valley of southwestern Colorado. The alternatives are compared by describing how the habitat management tools, water management, rest, prescribed burning, prescribed grazing, farming, and habitat protection would be used under each alternative. Also described under each alternative are the management of public use, cultural resources, and elk.

Under the No Action (Current management) Alternative the Refuges would continue to be managed as it has been in the recent past:

Water Management: The Complex would continue to use its irrigation systems much like the private landowners who preceded it to produce wet meadow habitat to support wetland-dependent wildlife species. Also water management, on certain portions of the Refuges, would accommodate various situations; for example, to meet the needs of certain species, compliance with State water law, control of noxious weeds, maintenance of water control infrastructure, and specific experiments to alter vegetation.

Rest: Availability of dense stands of wetland vegetation during the early spring months is an important component of waterbird production on both Refuges. Successful production of waterbirds is primarily reliant upon stands of vegetation largely excluded from harvest. Because of this, both Refuges are important islands of nesting cover within the Valley and the Flyway. Stands of dense vegetation are achieved through careful water manipulation and rest from management practices that result in defoliation, such as grazing, fire, herbicide, and mowing. Although the use of rest has tremendous benefits for a wide variety of birds, it is not feasible nor desirable to maintain all of the Complex's wetlands in a constant densely vegetated state.

Prescribed Burning: Burning is primarily used to set back plant succession in wetlands and uplands and to provide a mosaic of vegetation composition and structure for wildlife species with a wide array of nesting and feeding requirements. Habitats are

periodically burned to remove excessive litter buildup, stimulate vegetation growth, enhance nutrient cycling, increase soil temperatures, and control weeds. Prescribed burning is also used in some cases to reduce extremely dense or weedy vegetation so that other management tools can be used in that area.

Prescribed Grazing: From 1996 until present, cattle grazing has only occurred on the Complex to meet the needs of research. Grazing occurs during the growing season and animals are moved every 1 to 6 days to a new site. A grazed site is then rested from 25 to 35 days before it is grazed again. Sites may be grazed two to three times during May 15 to September 1.

Farming: The farming program on the Monte Vista NWR is primarily used to provide high energy food for migrating cranes and waterfowl. However, the food and cover provided by farm fields also benefit resident wildlife such as deer, rodents and pheasants. No farming is conducted at Alamosa NWR due to a lack of suitable soils.

Habitat Protection: Acquisition of four inholdings would continue to be pursued as opportunities arise. Easements and fee-title acquisitions would continue to be acquired to prevent uses that degrade wildlife habitat and buffer critical habitats on the Refuge. These efforts would continue as opportunities arise and be concentrated on lands within one-half mile of the current boundaries of the Refuges in order to protect them from the adverse impacts of housing development.

Currently, the U.S. Fish and Wildlife Service is an active partner in the Colorado Wetlands Initiative. It is a large Statewide partnership with the goal of protecting, restoring, and enhancing wetland habitat. This initiative is a voluntary approach to wetland conservation. It is aimed at conserving all biologically significant wetlands of Colorado and associated wildlife including birds, mammals, reptiles, and amphibians.

The Complex staff would continue to assist private landowners to create, protect, and enhance wetlands throughout the SLV through the Partners for Fish and Wildlife Program (PFW). Partnerships would continue to be developed with entities such as the Colorado Division of Wildlife and Ducks Unlimited to supplement Service funding of the program.

Public Use: Public access to the Refuges is provided and would continue. Monte Vista NWR has a larger network of roads open to the public, including several county roads which

bisect the Refuge, and a 2.5-mile auto tour route. Alamosa NWR is a larger contiguous land base with fewer public accessible roadways, having only a 3-mile auto tour route and a spur off a county road to the Hansen Bluff overlook. Both auto tour routes are near areas regularly used by waterbirds and other wildlife. Two hiking trails also exist on the Alamosa Refuge; a 2-mile (one way) trail along the Rio Grande and a 1-mile walk along wetland edges near the Bluff Overlook. Visitor numbers are directly related to wildlife activities such as courtship behaviors, crane staging, etc. Uses that are not wildlife-dependent are discouraged or even prohibited.

Hunting: Waterfowl and small game hunting would continue to be supported and encouraged. Camping areas for hunters would be provided. Hunter numbers are not regulated except during the first split of the waterfowl season.

Due to safety concerns, public elk hunting opportunities are managed. An elk hunt coordinator, under contract with the Colorado Division Of Wildlife (CDOW), accompanies the hunter to ensure safety. The hunter is selected from a public list maintained by CDOW. All applicants, for this hunt, must demonstrate a high degree of firearm proficiency and must be available on 24 hours notice.

Fishing: The shallow water in Refuge wetlands does not support a viable fishery. Wetlands either dry up or freeze solid annually which eliminates all fish that have entered the system. Therefore, fishing is not allowed on the Refuges. Creation and management of a viable fishery on the portions of the Rio Grande flowing through the Alamosa NWR will not be pursued for a variety of reasons. The major limiting factor is the inability of this stretch of river to support native fish species due to its ephemeral flows; it is often extremely low to dry during summer months.

Wildlife Observation: The Refuge staff is an active participant in the Monte Vista Crane Festival; providing technical support, as well as providing viewing areas, conducting special tours and assisting in setting a direction for the Festival. The Crane Festival is the largest wildlife related public event in Colorado (estimated 10,000 visitors in 1999).

Wildlife Photography: Photography would continue to be allowed, with no additional Refuge support provided to photographers.

Interpretation: A visitor contact station is part of the Complex's main office at the Alamosa NWR and is usually staffed daily. At Monte Vista NWR, the visitor contact station is only

open seasonally and operated by the Friends of the San Luis Valley National Wildlife Refuges or by volunteers. Self-guided auto-tour routes with interpretive signs are available to visitors on both Refuges. Additionally, on the Alamosa NWR, there is a drive to the panoramic "Bluff Overlook" which affords a magnificent view of Refuge wetlands, the Rio Grande, and the Sangre de Cristo mountains to the east.

Environmental Education: Volunteer and/or contractor led environmental education programs for local schools are provided, both as Refuge field trips and classroom presentations.

Universal Access and Design: Although efforts have been undertaken to make the Refuges accessible to all users, the Refuges are still short of this goal. Accessibility issues and needs will be addressed on a project-by-project basis as funding allows.

Cultural Resources: Humans have used the land we now call Alamosa and Monte Vista National Wildlife Refuges for approximately 11,000 years. Fourteen documented prehistoric and historic archaeological sites occur on Monte Vista NWR and eleven on Alamosa NWR. All but four sites (three on Monte Vista and one on Alamosa) have been determined as non-eligible for nomination to the National Register of Historic Places. The remaining four sites require further investigation and data collection before eligibility can be determined. These sites are being protected in accordance with the National Historic Preservation Act of 1996. Extensive archaeological sites exist in the headwaters of Spring Creek on Monte Vista Refuge and along Hansen's Bluff on Alamosa Refuge.

Elk Management: Elk on the Refuge present several problems: Elk trails and bedding areas have an impact on vegetation that could be used, or is being used, by ground-nesting birds; although the elk are easily seen from roads, they are very difficult to harvest in a safe manner; they damage fences and take livestock forage on neighboring, private lands; their movement onto and off the Refuge have resulted in collisions with vehicles on the adjacent public highways.

Current elk management, through a managed public hunt, is conducted in accordance with Colorado Division of Wildlife regulations. Hunts are generally initiated once transient elk numbers exceed 100 on the west end of Monte Vista NWR. The hunts are conducted from August 15 to February 28 and include only cow elk. Hunters are selected from a list of applicants who have demonstrated a high degree of

firearm proficiency and are available on 24 hours notice.

Proposed Alternative

Water Management: Under this Alternative, Refuge staff would continue to utilize surface and well water to create wetland habitat on both Refuges as described under the No Action Alternative. Additional efforts would focus on improving efficiency of surface water application, monitoring of water usage, better understanding of water rights, historical processes, subsurface and surface interactions, and improving knowledge of groundwater and its role in maintaining wetlands. Better methods and capabilities for monitoring habitat responses to water application would be developed to facilitate an adaptive habitat management program.

Efforts will be taken to restore meandering streambeds and their associated hydrology and riparian habitats on Refuge lands. Although such actions will not have major impacts on either the unconfined or confined aquifers of the Valley, they can positively impact localized groundwater tables and artesian wells, and increase efficiency of irrigation during the following season.

Under this Alternative, irrigation systems in all Refuge units would be upgraded as funding allows to enact more precise and efficient management of irrigation water. Currently, wetland vegetation is maintained using flood irrigation practices where water is applied at the highest elevation of a unit from a supply ditch or well head and is allowed to flow across the unit to lower elevations.

Rest: Under this Alternative, irrigation systems in all Refuge units would be upgraded as funding allows to enact more precise and efficient management of irrigation water. Currently, wetland vegetation is maintained using flood irrigation practices where water is applied at the highest elevation of a unit from a supply ditch or well head and is allowed to flow across the unit to lower elevations.

Prescribed Burning: In addition to that described under the No Action Alternative, management would implement two new initiatives. First, formation of an interagency fire team would be pursued. This idea has been discussed among the various State and Federal land management agencies, but no action has been taken. This team would be responsible for conducting prescribed burns and suppressing wildfires on member agency lands. Second, Refuge management would pursue the hiring of additional staff to develop a burn monitoring program and

detailed burn criteria in an effort to better understand the impacts of prescribed burning and to better implement its use in meeting management objectives.

Prescribed Grazing: Future use of prescribed grazing on the Refuges will be largely dictated by the results of research currently being conducted. In the future, if and when grazing is used, prescriptions will delineate the location of the site to be grazed and specific objectives and purposes of the tool such as to control weeds, increase new growth, and provide a competitive advantage to certain vegetation. This site-by-site evaluation and planning will allow for maximum control and flexibility of this tool as well as ensuring that only delineated sites are affected by the tool and that all factors and interests are considered.

Farming: Under this Alternative, migrating birds would be provided with the same amount of small grain food from crops currently provided. The existing mixed organic/non-organic farming program operated by Refuge staff would be converted to a cooperative farming program. Farming would continue but Refuge staff would only be responsible for irrigation of the crops. The cooperating farmer would continue the crop rotation of two years of small grains followed by two years of alfalfa and then one year fallow. The cooperating farmer would be allowed to keep all or a portion of the alfalfa crop based on yields of the small grain crops.

Refuge staff would also augment the farming program with a moist soil plant management program to diversify the types of feed available to the birds. The farming and moist soil plant programs would be monitored and managed through the adaptive management concept. Research would be encouraged to help identify the amount and kinds of high energy food sources the Refuge could and should be providing for migrating and wintering avian species.

Habitat Protection: Under the proposed Alternative, current support for the Service's Partners for Wildlife program would continue in order to ensure the program's growth and success. The Refuge would also continue to be an active partner in Colorado Wetlands Initiative Legacy project led by the Colorado Division of Wildlife.

Public Use: Under this Alternative, educating the public as to the nature and value of wetlands will focus on contrasting the intensely managed wetlands of Monte Vista NWR with the more natural aspects on the Alamosa NWR wetlands. To assure compliance with public use minimum standards,

money will be targeted for projects through RONS and MMS. Currently, funding proposals are developed for projects that will improve the quality of visitor experiences.

Hunting: Current waterfowl and small game hunting would continue to be supported and encouraged. To the extent feasible, the hunting experience would be further tailored to meet the desires of hunters using the Refuges based on periodic questioning of waterfowl hunters and other public input.

Fishing: Same as that described under the No Action Alternative.

Wildlife Observation: Support for the Crane Festival would continue as described under the No Action Alternative. Under this Alternative, on the Monte Vista NWR, public and scientific input would be sought regarding the seasonal expansion of the auto tour route, development of wildlife observation sites at Parker Pond, and development of wildlife observation decks along County Road 3E. Opinion and information would also be sought regarding the development of an observation deck adjacent to the Refuge Headquarters at the Alamosa NWR and near the proposed visitor center and education facility at the Monte Vista NWR.

Wildlife Photography: Same as that described under the No Action Alternative.

Interpretation: A multi-purpose education and visitor center facility on the Monte Vista NWR is the highest educational priority for the Complex. Also under this Alternative, the Refuge staff would implement an interpretation program centered around the cultural resources found on the Complex and around the Valley. Interpretation of past human use would focus on the theme that humans have always, and still depend upon natural resources for survival.

Environmental Education: Environmental education goals and programs would be the same as those under No Action.

Universal Access and Design: Efforts in this area would be the same as that described under the No Action Alternative with a few additional efforts. Developments would include new rest room facilities and wildlife observation blinds and/or platforms. Universally accessible hunting blinds would be built on both Refuges. All of these projects will follow the Americans with Disabilities Accessibility Guidelines.

Cultural Resources: Archaeological work on the Complex will be expanded to include work needed to determine

the eligibility of four documented sites for nomination to the National Register of Historic Places. Management under this Alternative would also include a sample archaeological inventory of Refuge lands over a 15-year period.

Elk Management: Under this Alternative, the resident elk would be managed to discourage their use of Monte Vista NWR in large numbers with the intent to prevent habitat degradation.

Dated: November 25, 2002.

John A. Blankenship,

Acting Regional Director, Region 6, Denver, Colorado.

[FR Doc. 03-7453 Filed 3-27-03; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Impact Statement on Double-Crested Cormorants; Extension of Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability for public comment; extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is extending the comment period on a Draft Environmental Impact Statement (DEIS) that is available for public review. The DEIS analyzes the potential environmental impacts of alternative strategies to reduce damages associated with double-crested cormorants in the continental United States. The analysis provided in the DEIS is intended to accomplish the following: inform the public of the proposed action and alternatives; address public comment received during the scoping period; and disclose the direct, indirect, and cumulative environmental effects of the proposed actions and each of the alternatives. The Service invites the public to comment on the DEIS.

DATES: Written comments on the DEIS must be received on or before May 16, 2003.

ADDRESSES: Mail requests for copies of the DEIS to Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, MBSP-4107, Arlington, Virginia 22203. You can also download copies of the DEIS from the Division of Migratory Bird Management Web site at <http://migratorybirds.fws.gov/issues/cormorant/deis/deis.html>. Send comments on the DEIS to the above address. Alternatively, you may submit comments electronically to the

following address: cormorants@fws.gov. The public may inspect comments during normal business hours in Room 4701, 4501 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT:

Brian Millsap, Chief, Division of Migratory Bird Management, or Shauna Hanisch (703) 358-1714.

SUPPLEMENTARY INFORMATION: On December 3, 2001, we published a notice of availability in the **Federal Register** (66 FR 60218) to announce that the DEIS on double-crested cormorant management was available for public comment. On December 19, 2001, we published a **Federal Register** notice of meetings and extension of the comment period (66 FR 65510) to announce the schedule of public hearings to invite further public participation in the DEIS review process.

The DEIS evaluates alternative strategies to reduce damages associated with double-crested cormorants in the continental United States. The DEIS is a comprehensive programmatic plan intended to guide and direct double-crested cormorant management activities. The DEIS examined six management alternatives for addressing conflicts with double-crested cormorants: (A) No action, (B) Nonlethal control, (C) Increased local damage control, (D) Public resource depredation order, (E) Regional population reduction, and (F) Regulated hunting. The proposed action/preferred alternative in the DEIS was alternative D, Public resource depredation order. This alternative entails: revising the existing aquaculture depredation order that applies to commercial freshwater aquaculture facilities and hatcheries to allow winter roost control; establishing a new depredation order to protect public resources from cormorant damages; and revising Director's Order 27 to allow lethal take of double-crested cormorants at public fish hatcheries. Alternative D is intended to enhance the ability of resource agencies to deal with cormorant damages in an effective and timely manner by giving them more regulatory flexibility. In the DEIS, alternatives were analyzed with regard to their potential impacts on double-crested cormorant populations, fish, other birds, vegetation, federally-listed threatened and endangered species, and socioeconomics.

On March 17, 2003 (68 FR 12653), we published a proposed rule in the **Federal Register** that would implement our preferred alternative. Because of the publication of the proposed rule, we have extended the comment period on the DEIS. We note that the proposed

rule presents the preferred alternative in a more detailed manner than the DEIS and advise the reader to refer to it. It is available at our Web site <http://migratorybirds.fws.gov>. The Service invites careful consideration by all parties, and welcomes serious scrutiny from those committed to the long-term conservation of migratory birds.

In order to be considered, electronic submission of comments must include your name and postal mailing address; we will not consider anonymous comments. All comments received, including names and addresses, will become part of the public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's National Environmental Policy Act regulations [40 CFR 1506.6(f)]. Our practice is to make comments available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If a respondent wishes us to withhold his/her name and/or address, this must be stated prominently at the beginning of the comment.

Dated: March 24, 2003.

Paul R. Schmidt,

Assistant Director, Migratory Birds and State Programs.

[FR Doc. 03-7474 Filed 3-27-03; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02-15]

Genesis 1:29 Corporation; Denial of Application

On December 13, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Genesis 1:29 Corporation (Respondent) of Petaluma, California, proposing to deny its application for DEA Certificate of Registration as a manufacturer of marijuana and tetrahydrocannabinol ("THC"), both Schedule I controlled substances. The statutory basis for the Order to Show Cause was Respondent's lack of state authorization to manufacture controlled substances in the State of California. 21 U.S.C. 824(a)(3). In addition, the Order to Show Cause alleged that Respondent's registration would be inconsistent with

the public interest, as the term is used in 21 U.S.C. 823(a) and 824(a)(4).

By letter dated January 9, 2002, the Respondent, acting *pro se* through its CEO Robert G. Schmidt (Mr. Schmidt), requested a hearing on the issues raised by the Order to Show Cause. The matter was then docketed before Administrative Law Judge Gail A. Randall (Judge Randall). In its request for hearing, Mr. Schmidt on behalf of the Respondent indicated that with respect to medical grade cannabis, the Respondent's interest in the instant proceeding was "to develop a federally approved and federally regulated dispensary model and research facility." The Respondent further indicated that its position on the pending DEA application was "flexible since there are no federally established guidelines for dispensing medical cannabis to patients other than for research purposes."

On January 25, 2002, Judge Randall issued an Order for Prehearing Statements. Following the filing of Prehearing Statements by the respective parties, on April 30, 2002, the Government filed its Request for Stay of Proceedings and Motion for Summary Judgment ("motion"). On May 23, 2002, Respondent filed its response to the Government's motion. On June 26, 2002, Judge Randall issued her Opinion and Recommended Ruling, granting the Government's motion, and recommending that Respondent's application for registration as a manufacturer be denied. Neither party filed exceptions to Judge Randall's Opinion and Recommended Ruling and on August 8, 2002, Judge Randall transmitted the record of these proceedings to the Deputy Administrator. The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

In its motion, the Government asserted that on November 11, 2001, DEA transmitted a series of written questions to the Respondent regarding its method of operations and intended customers. The Government attached to its motion a copy of the Respondent's November 26, 2001 response letter to DEA's questionnaire. In the attached response letter, Respondent indicated that the intended purpose of its bulk manufacture of marijuana was to "supply clinical cannabis to physician's patients operating within California state laws and guidelines established by California Public Health and Safety Code 11362.5 including 11362.7 and 11362.9 * * *" The letter further

outlined that Respondent's intended customers were "Medical Patients" referred under California's Compassionate Use Act of 1996.

The Government argued, *inter alia*, that California law requires the Respondent to obtain state licenses to manufacture marijuana or THC for human consumption, pursuant to the Consumer Product Safety Section, California Department of Health Services, and from the State Board of Pharmacy. In support of its argument, the Government attached to its motion a declaration from Susan Bond, Section Chief of the Consumer Product Safety Section, Department of Health Services, Food and Drug Branch for the State of California. Ms. Bond stated that a state license to manufacture marijuana and THC was required under California Health and Safety Code Section 111615, and according to state records, the Respondent neither held such license, nor submitted an application to obtain such license. Ms. Bond concluded that the Respondent did not possess valid state authority in California to manufacture marijuana or THC for medical use in that state. The Government also attached eight Certifications of Non-Licensure, in which the Executive Officer for the California Board of Pharmacy certified that Respondent was not currently licensed with the California Board of Pharmacy.

In response to the Government's motion, the Respondent highlight its participation in various research projects, specifically in the area of whole plant utilization. However, the Respondent did not dispute that it currently lacks state authorization to manufacture marijuana and THC. The Respondent further argued that the granting of the Government's motion would be premature, impede future research, deny the Respondent the right to a fair trial, and cause irreparable injury to the Respondent's patients and associates.

Pursuant to 21 U.S.C. 823(a), DEA shall register an applicant to manufacture controlled substances in Schedule I or II if it determines that such registration is consistent with the public interest. Included among the six public interest factors is "compliance with applicable State and local law." 21 U.S.C. 823(a)(2). In addition 21 CFR 1307.02 provides that DEA will not authorize any person "to do any act which such person is not authorized or permitted to do under * * * the law of the State in which he/she desires to do such act."

Section 823(a) contains no express threshold requirement of state

authorization. Nonetheless, DEA has previously determined that where as here state law requires manufacturers of controlled substances to obtain a state license, it would be pointless to grant a Federal registration when the Respondent lacked state authority. Michael Schumacher, 60 FR 13171 (1995); see also Church of the Living Tree, 63 FR 69,674 (1998).

In her Opinion and Recommended Ruling, Judge Randall agreed with the Government that state licenses are required in California prior to manufacturing marijuana or THC. Judge Randall found that consistent with DEA regulations, as well as the agency's discussions in Michael Schumacher and Church of the Living Tree, DEA will not authorize the Respondent to engage in the manufacture of a Schedule I controlled substance in California since the Respondent lacks authority from that state to conduct such an activity. Therefore, Judge Randall concluded that summary disposition was proper.

The Deputy Administrator concurs with the Administrative Law Judge's grant of the Government's Motion for Summary Judgement. It is well settled, that when no question of material fact is involved, or when the material facts are agreed upon, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Gilbert Ross, M.D., 61 FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32,887 (1983), *aff'd sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977).

The Deputy Administrator also finds, and the parties do not dispute, that the State of California requires a manufacturer of marijuana or THC to obtain state licenses before engaging in such activity. It is clear from the record in this proceeding that the Respondent is not licensed as a manufacturer of Schedule I controlled substances in California. Thus, as Judge Randall noted, there is no material question of fact in dispute concerning this aspect of the case. Because the Respondent does not meet a necessary precondition for DEA registration, a hearing in this matter is unnecessary. Therefore, Respondent's pending application for DEA Certificate of Registration must be denied.

In its motion, the Government further argued that the Respondent's application should be denied because marijuana and THC have no accepted medical use under the Controlled Substances Act. However, as noted above, DEA has indicated in previous

final orders that an application to manufacture marijuana would be denied if the Respondent lacked state authority for such activity. Because the Respondent is not entitled to a DEA registration due to its lack of state authorization to manufacture Schedule I controlled substances in California, the Deputy Administrator concludes that it is unnecessary to address whether Respondent's application for DEA registration should be denied based upon the other grounds asserted in the Order to Show Cause and the Government's Motion for Summary Judgement. See Samuel Silas Jackson, D.D.S., 67 FR 65145 (2002); Nathaniel-Aikens-Afful, M.D., 62 FR 16871 (1997).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for DEA Certificate of Registration submitted by Genesis 1:29 Corporation, be, and it hereby is, denied. This order is effective April 28, 2003.

Dated: March 13, 2003.

John B. Brown III,
Deputy Administrator.

[FR Doc. 03-7389 Filed 3-27-03; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Lazaro Guerra, M.D.; Denial of Application for Registration

This order serves as a correction of the final order previously issued in this matter and published on November 12, 2002.

On February 25, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lazaro Guerra, M.D. (Dr. Guerra) of Hialeah, Florida, notifying him of an opportunity to show cause as to why DEA should not deny his application for a DEA Certificate of Registration pursuant to 21 U.S.C. 824(a). As a basis for revocation, the Order to Show Cause alleged that Dr. Guerra is not currently authorized to handle controlled substances in Florida, the state in which he practices, and that he has been permanently excluded from the Medicare program. The order also notified Dr. Guerra that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Guerra at both his

registered location in Hialeah, Florida and to the Federal Detention Center in Miami, Florida, where Dr. Guerra was incarcerated. DEA received signed receipts indicating that the Order to Show Cause was received on Dr. Guerra's behalf on March 5, 2002, at the Federal Detention Center and on March 4, 2002, at his registered address. DEA has not received a request for hearing or any other reply from Dr. Guerra or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Guerra is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Administrator finds that on March 11, 2001, Dr. Guerra submitted an application for DEA Certificate of Registration as a researcher, seeking authorization to handle controlled substances in Schedule I at a hospital facility in Hialeah, Florida.

On February 10, 2000, Dr. Guerra, along with two other individuals, were charged through a criminal information in the United States District Court, Southern District of Florida with conspiracy to commit mail fraud. Specifically, Dr. Guerra and others were charged with using fraudulent means to obtain approximately \$2.7 million from Medicare in the form of reimbursements from 1990 to January 1997. On April 10, 2001, Dr. Guerra entered a guilty plea to one felony count of mail fraud. As part of his plea, he agreed to pay \$2.7 million in restitution to the United States Department of Health and Human Services. He was sentenced to forty-eight (48) months imprisonment, and ordered to pay additional fines and assessments. He further agreed to a permanent mandatory exclusion from participation in the Medicare program pursuant to 42 U.S.C. 1320a-7(a). Such exclusion is an independent ground for revoking a DEA registration. 21 U.S.C. 824(a)(5).

Moreover, on July 18, 2001, the Florida Department of Health issued an Order of Emergency Suspension of License with respect to Dr. Guerra's medical license. The suspension of his medical license has not been lifted. Therefore, Dr. Guerra is not currently authorized to handle controlled substances in the State of Florida. Therefore, she is not entitled to a DEA

registration in that state. 21 U.S.C. 824(a)(3).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that Dr. Guerra's application for DEA registration be, and hereby is, denied. The Deputy Administrator further orders that any other pending applications from Dr. Guerra be, and hereby are, denied. This order is effective April 28, 2003.

Dated: March 6, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03-7388 Filed 3-27-03; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 00-24]

Robert A. Leslie, M.D., Revocation of Registration

On May 8, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert A. Leslie, M.D. (Respondent), proposing to deny his application for a DEA Certification of Registration pursuant to 21 U.S.C. 823(f) for reason that such registration would be inconsistent with the public interest. Specifically, the Order to Show Cause alleged the following:

(1) On August 17, 1990, Respondent's DEA Certificate of Registration, ALO033186, was revoked based in part on findings that: (a) On or about October 3, 1986, Respondent was convicted in the Superior Court for the County of Los Angeles, California of eight counts of unlawfully prescribing, administering, furnishing, or dispensing controlled substances; and (b) effective March 23, 1990, the California Board of Medical Quality Assurance suspended Respondent's license to practice medicine for ninety days and placed his medical license on probation for five years.

(2) During February 1992, Respondent submitted a new application for registration. Following a hearing, the then-Administrator of DEA denied Respondent's application, effective March 15, 1995, noting, *inter alia*, that Respondent was either unable or unwilling to discharge the responsibilities inherent in a DEA registration. Respondent's petition for review of this decision was denied by

the United States Court of Appeals for the Ninth Circuit on August 5, 1996.

(3) On or about December 13, 1996, Respondent submitted a new application for a DEA registration. The then-Deputy Administrator concluded that the previous administrative proceeding was *res judicata* for the purposes of the then-current proceeding. Effective June 14, 1999, the Deputy Administrator again denied Respondent's application, concluding that other than the passage of time, the circumstances existing at the time of the prior proceeding had not sufficiently changed to warrant issuance of a DEA registration.

Respondent, acting *pro se*, filed a timely request for a hearing on the issues raised in the Order to Show Cause. Following prehearing procedures, a hearing was held on September 21, 2000, and February 8, 2001, in Los Angeles, California before Administrative Law Judge Mary Ellen Bittner (Judge Bittner). At the hearing, the Government called two witnesses to testify and the Respondent testified on his own behalf. Both parties also introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law, and argument.

On August 2, 2001, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision recommending that the Respondent's application be denied. On or around August 17, 2001, the Respondent timely filed exceptions to Judge Bittner's recommended ruling. Thereafter, Judge Bittner transmitted the record of these proceedings to the Administrator of the Drug Enforcement Administration.

On March 4, 2002, the Respondent filed Judge Bittner, a letter (the March 2002 letter) in which he represented, among other things, that a provision under California law allows physician assistants to prescribe certain drugs "with or without preprinted prescriptions from the supervising physician." The Respondent further requested that Judge Bittner transmit the additional document to the Deputy Administrator for consideration. It appears from a review of the record before the Deputy Administrator that matters involving the role of physician assistants and the prescribing of controlled substances were litigated. It is unclear however why the Respondent did not introduce the March 2002 at the hearing or reference its contents in his post-hearing submissions. Therefore, in rendering his decision in this matter, the Deputy Administrator has not considered the Respondent's untimely

submission, as it seeks to introduce evidence not submitted at the hearing in this matter. See Richard S. Wagner, M.D. 63 FR 6771 (1998).

On August 20, 2002, the Deputy Administrator received from Government counsel a letter, with attachments, informing that due to an administrative oversight, DEA Certificate of Registration, BL6652312, was erroneously issued to the Respondent on February 9, 2000. In light of the Respondent's current registration status, the question for resolution now before the Deputy Administrator is whether or not the Respondent's continued registration with DEA is inconsistent with the public interest.

The Deputy Administrator finds that the Respondent previously possessed DEA Certificate of Registration AL0033186. On June 21, 1989, an Order to Show Cause was issued proposing to revoke that Certificate of Registration. Robert A. Leslie, M.D. 64 FR 25908 (1999). The Respondent initially requested a hearing, but later requested the opportunity to submit a written statement in lieu of a hearing. Based on the Government's investigative file and Respondent's written statement, the then-Acting Administrator revoked Respondent's registration effective August 17, 1990. See 55 FR 29,278 (July 18, 1990).

In February 1992, Respondent applied for a new DEA registration. An Order to Show Cause was issued on May 13, 1993, proposing to deny the application. Following a hearing before Judge Bittner, the then-Deputy Administrator adopted Judge Bittner's recommended ruling and denied the Respondent's application for registration, effective March 15, 1995. See 60 FR 14,004 (1995).

During the 1993 proceeding before Judge Bittner, the record established that on October 9, 1986, after a jury trial, Respondent was found guilty in the Municipal Court of Long Beach, California, of eight misdemeanor counts of unlawfully prescribing, administering, furnishing, or dispensing controlled substances between July 1985 and January 1986. The convictions were affirmed on appeal by the Appellate Department of the Superior Court, State of California, on May 18, 1988. As a result of these convictions, the California Board of Medical Quality Assurance (Board), on a date not specified in the record, revoked the Respondent's medical license. However, the Board stayed the revocation for five years, suspended Respondent from the practice of medicine for ninety days, and placed him on probation subject to

various conditions. In response to the Board's decision, the Respondent sued the Board, but was unsuccessful. The court in which Respondent brought the action ultimately fined him \$10,000 and found that his appeal was frivolous. In addition, the court found that the Respondent must "accept responsibility for his actions."

As outlined in a prior final order, the then-Deputy Administrator found at the 1993 hearing, the Respondent attacked his criminal convictions. See 64 FR 25908 (May 13, 1999). However, Judge Bittner and the then-Deputy Administrator found that the conviction was *res judicata* and that Respondent was therefore prohibited from relitigating the matter. The agency also found that although he was free to offer evidence that he would never again engage in the sort of conduct that resulted in his conviction, Respondent did not avail himself of that opportunity and offered no evidence of remorse for his misconduct, efforts at rehabilitation, or recognition of the severity of his conduct. Judge Bittner and the then-Deputy Administrator therefore concluded that Respondent was either unwilling or unable to discharge the responsibilities of a DEA registrant and recommended that his application be denied. Respondent filed a petition for review of the 1995 final order in the United States Court of Appeals for the Ninth Circuit. The court denied that petition on August 5, 1996.

On December 13, 1996, Respondent again applied for a DEA registration, and an Order to Show Cause was issued on December 23, 1997, proposing to deny the application. Following a hearing, Administrative Law Judge Gail A. Randall recommended that the application be granted, subject to certain conditions. Judge Randall found that Respondent had been forthcoming on his registration application about his convictions and prior DEA proceedings, there were no new allegations that Respondent had handled controlled substances improperly after his 1986 conviction, and there had been no complaints or adverse actions against his medical license since the 1988 Board proceeding. Judge Randall further found that Respondent had continued to make valuable contributions to the medical profession; participated in continuing medical education; there were no restrictions on his medical license in California; and Respondent had become more conservative in his approach to prescribing controlled substances.

In the May 13, 1999, Final Order, the then-Deputy Administrator found that the final order published on March 15,

1995, was *res judicata* for purposes of the proceeding before him, and adopted that final order in its entirety. 64 FR 25908, *supra*. While the then-Deputy Administrator adopted the findings of fact and conclusions of law as set forth, he did not adopt the recommended ruling of the Administrative Law Judge. Instead, the Deputy Administrator found that in addition to his criminal conviction and the suspension of his medical license, the Respondent was unrepentant, and continued to blame everyone but himself for his unlawful actions. Therefore, the then-Deputy Administrator concluded that Respondent's registration would not be consistent with the public interest and denied the application.

On June 29, 1999, Respondent again applied for a DEA registration to handle controlled substances. That application and the disposition of the Certificate of Registration that was mistakenly issued to the Respondent, are the subjects of the instant proceedings.

The Deputy Administrator finds that the Respondent's June 1999 application was forwarded to DEA's Los Angeles office for investigation because Respondent had answered "yes" to questions on the form that ask whether the applicant has ever been convicted of a crime in connection with controlled substances, ever surrendered or had adverse action taken on a federal controlled substance registration, or has ever had action taken against a state professional license or controlled substance registration. A DEA Diversion Investigator testified that on November 24, 1999, she spoke with the Respondent and asked him why he believed his application should be granted. According to the investigator, the Respondent attacked the prior DEA and criminal proceedings in which he had been involved, but did not say anything that would suggest that he would act responsibly in the future if his application were granted, nor did he divulge any actions he had taken that would support his application.

Respondent then wrote a ten-page letter dated November 25, 1999, to the Diversion Investigator explaining his position with respect to the 1986 conviction and his efforts first to maintain and then to regain DEA registration. Specifically, the Respondent made various claims regarding the inadequacy of the 1986 criminal proceedings resulting in his conviction, as well as his legal representation during those proceedings. In support of the latter assertion, Respondent offered into evidence in the instant matter a letter from the State Bar of California dated

August 3, 1999, indicating that his attorney "resigned from the practice of law with charges pending" in 1994.

Respondent also contended in the aforementioned letter that his applications for habeas corpus, coram nobis, and declarative relief were denied, asserting that he was "unable to submit an adequate habeas corpus petition because defense counsel refused to release [Respondent's] criminal file, although [sic] sued for its return in the legal malpractice suit, until given an ultimatum to do so by the state bar, when [Respondent] was no longer in custody."

With respect to the various DEA proceedings described above, the Respondent asserted in his letter that his registration was initially revoked "without notice or hearing based on false, inadmissible hearsay evidence given to the agency by the medical board." The Respondent recited numerous additional allegations with respect to DEA's action against his previous registration, as well as his applications for registration, which are summarized as follows: DEA took action against the Respondent's registration because he advised the agency of the criminal activities taking place at a clinic in Long Beach; an undercover operative gave false information that Respondent supplied Schedule II drugs for weight control when in fact he used Schedule IV drugs; the then-Administrator did not consider all the pleadings and evidence; no other physician has had a registration revoked based on a misdemeanor conviction for improperly prescribing Schedule III drugs; he had three years of training in pharmacology and was familiar with the drugs he handled; hearsay was improperly admitted; and the then-Administrator's decision conflicted with those of the trial judge, the state administrative law judge for the Board, as well as the Board itself.

The Respondent further contended in his letter that the denial of his 1992 application was based on his purported failure "to take unspecified 'rehabilitative' steps." With respect to the denial of his 1996 application, Respondent asserted, *inter alia*, that the then-Deputy Administrator's order conflicted with the opinion of the administrative law judge who heard the evidence, and was made on the "incorrect basis that in [Respondent's] administrative hearing he failed to offer any evidence that [he] has been rehabilitated and can handle restricted substances even on a restricted bas[i]s."

The Government also presented the testimony of a second Diversion Investigator from the agency's Los

Angeles office. The investigator testified that on July 13, 2000, DEA personnel seized approximately 13,000 prescriptions from Plaza Pharmacy in Hawthorne, California, in the course of an investigation unrelated to Respondent. Three of the seized prescriptions, which were admitted into evidence as Government exhibits appeared to be written by someone on a preprinted prescription pad with a caption that read, "Robert M.D. Clinic." The prescriptions in question also bore the clinic's address as well as the Respondent's name. One of the prescriptions was issued to a patient hereinafter identified by his initials "FU" and dated January 12, 2000, for promethazine with codeine (a Schedule IV controlled substance); prescriptions were also issued to patient "GB" and dated January 19, 2000, for forty cephalexin (a non-controlled drug) and eight ounces of Phenergan with codeine (a brand name for promethazine); and the third prescription was issued to a "JH" and dated December 27, 1999, for cephalexin and promethazine with codeine. Further review of the third prescription reveals the Respondent's previous DEA registration number, AL0033186, written in the lower left corner of the document. As noted above, the DEA registration number was revoked, effective August 17, 1990.

The second DEA Diversion Investigator further testified at the hearing that the handwriting on each of the Plaza Pharmacy prescriptions appeared to be different, and that the person who signed each prescription appeared to be someone other than the person who wrote the patient's name, the medication to be dispensed, and date. The investigator further testified that the DEA registration number written on these prescriptions did not appear to be in Respondent's handwriting.

Respondent testified that he was retained as a physician in the Robert M.D. Clinic in Hawthorne in December 1999 as a supervisor of physician assistants, that he did not personally see patients or write prescriptions, and that he only went to the clinic once or twice per week to sign charts. The Respondent further testified that he neither wrote the prescriptions at issue nor authorized anyone else to write them, and did not know any of the patients to whom the prescriptions were issued. Respondent also testified that he did not think he signed the prescriptions because he usually wrote out his whole name when signing prescriptions and some letters appeared to be missing from the prescriptions at issue. However, Respondent also acknowledged that "[i]t

might be" his signature on the prescription for GB, and if so, he may have signed the prescription in blank, as he would not have issued the prescription as written. With respect to the prescription to JH, Respondent testified that the physician signature, instructions, and the patient's name and address were not in his handwriting.

DEA's investigation did not reveal whether the Respondent actually issued the above referenced prescriptions. The Deputy Administrator concurs with Judge Bittner's finding that the record is not sufficient to determine whether or not Respondent signed the three prescriptions in evidence. However, Respondent testified that his practice was to sign "a bunch of" blank prescriptions preprinted with his name and make them available to the clinic's physician assistants, with a "proviso that they did not prescribe any restricted substances." Respondent further testified that he told the physician assistants not to issue prescriptions for controlled substances, and that a sign posted in the clinic advised patients that the clinic would not issue controlled substances prescriptions.

In addition, a part time physician assistant employed at the Robert M.D. Clinic for two or three months beginning in early August 2000, testified that she had seen blank pads with prescriptions similar in appearance to the prescriptions issued to GB and FU. The physician assistant added that the DEA and license numbers on the prescriptions were those that the owner of the clinic had told her she would need to provide to pharmacists in order to have prescriptions filled. The DEA and license numbers referenced by the physician assistant belonged to the Respondent. The physician assistant further testified that she was told by both the clinic owner and Respondent that she could use the Respondent's DEA number when calling a pharmacy to authorize prescriptions for medications to treat high blood pressure and diabetes.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal for such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See* Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

Regarding factor one, in 1990, the Board revoked the Respondent's medical license, stayed the revocation, but suspended his license for 90 days and then placed it on probation for five years. There is no evidence before the Deputy Administrator demonstrating that Respondent's medical license is currently restricted in any form. Nevertheless, state license is a necessary, but not a sufficient condition for registration, and therefore, this factor is not dispositive. *See e.g.*, Wesley G. Harline, M.D., 65 FR 5665 (2000); James C. Lajevic, D.M.D., 64 FR 55962 (1999).

Factors two and four, Respondent's experience is dispensing controlled substances and compliance with applicable controlled substance laws are relevant in determining whether Respondent's continued registration would be inconsistent with the public interest. Respondent improperly prescribed, administered, or otherwise dispensed controlled substances in 1985 and 1986. Although the Respondent has maintained that he has done nothing wrong, a jury convicted him of eight misdemeanor counts as a result of this conduct, and the judgment was affirmed on appeal.

In the most recent proceeding, the Respondent, by his own admission, signed blank prescriptions and made them available to physician assistants. While there was no evidence presented that Respondent issued or signed any of the three controlled substance prescriptions, his pre-signing prescription forms made it possible for "prescriptions" to be issued in violation of 21 U.S.C. 829, 841, and 843.

Therefore, the Deputy Administrator finds that factors two and four weigh in favor of a finding that Respondent's continued registration would be inconsistent with the public interest.

With respect to factor five, the Deputy Administrator concurs with Judge Bittner that the Respondent continues to argue that his convictions were improper, continues to blame others for his misconduct, and refuses to accept responsibility for his actions. In addition, the Respondent made a practice of making pre-signed prescriptions available to physician assistants at the Robert, M.D. Clinic, who were then free to issue those prescriptions with no supervision from Respondent. The Deputy Administrator further concurs with Judge Bittner that Respondent knew or should have known that he would be liable for those prescriptions, but nonetheless appears to think that posting signs in the clinic and advising physician assistants not to issue prescriptions for controlled substances absolve him from liability.

After reviewing the record, Judge Bittner found that based on the Respondent's refusal to take responsibility for past misconduct and his irresponsible pre-signing of prescription pads, he continues to be unwilling or unable to accept the obligations that the Controlled Substances Act and its implementing regulations impose upon DEA registrants. Judge Bittner therefore concluded that a preponderance of the credible evidence in the record established that Respondent's continued registration would be inconsistent with the public interest, and recommended that his application be denied. In light of the subsequent issuance of a Certificate of Registration to the Respondent, the Deputy Administrator must now determine whether or not that registration should be continued.

The Respondent filed exceptions to Judge Bittner's recommended ruling. With respect to findings that he provided blank prescriptions bearing his signature in violation of 21 U.S.C. 829, 841, and 843, the Respondent argued that was simply complying with California law which, according to the Respondent, allows for the establishment of a prescription protocol between physician and physician assistant. With respect to pre-signed prescriptions, Respondent further argued that the protocol he established with his physician assistant did not allow for the prescribing of controlled substances; the physician assistant must account for all prescriptions before receiving more prescription blanks; the Respondent did not put his DEA number on blank prescriptions given to physician assistants; and that such a policy would be violative of the equal protection clause of the United States constitution. The Respondent further

argued that "physician assistants are allowed to prescribe Schedule III and IV drugs whether or not the supervising physician has a narcotic registration."

The Deputy Administrator finds that the Respondent's exceptions with respect to pre-signed prescriptions lack merit. First, the Respondent's assertion that he did not place his DEA registration number on blank prescriptions is of no moment. As noted above, testimony was offered at the hearing that the Respondent not only left pre-signed prescriptions with the staff of the Robert M.D. Clinic, but also authorized the use of his previous DEA number by a physician assistant. The unlawful practice of pre-signing prescriptions has been a contributing factor in DEA determinations that a registration is inconsistent with the public interest. *See e.g.*, Christopher E. Castle, M.D., 67 FR 71196-97 (2002); James C. Womack, M.D., 67 FR 35137 (2002); Edward L.C. Broomes, M.D., 61 FR 3946-47 (1996); Jude R. Hayes, M.D., 59 FR 41785 (1994); Veera Sripinyo, M.D. 56 FR 64809 (1991).

Second, the establishment of a prescription protocol with a physician assistant does not absolve the Respondent from liability that arises out of improperly issued prescriptions for controlled substances. The Respondent's conduct in this regard created a situation that allowed unauthorized persons to issue prescriptions without supervision. The Deputy Administrator finds that the Respondent's counter argument regarding his compliance with the terms of a prescription protocol is yet another demonstration of his unwillingness to accept responsibility for his misconduct.

The Deputy Administrator similarly finds no merit in the Respondent's challenge of the applicability of the 21 U.S.C. 829, 841, and 843 as they relate to his providing blank, pre-signed prescriptions to his staff. The referenced statutory provisions address the proper manner in which prescriptions for controlled substances are to be issued (section 829) and/or prohibited acts with respect to the prescribing of controlled substances (sections 841 and 843). Specifically, section 843(a) states in pertinent part:

It shall be unlawful for any person knowingly or intentionally—(2) to use in the course of the * * * dispensing of a controlled substance * * * a registration number which is fictitious, revoked, suspended, expired, or issued to another person.

The Respondent's action in providing to the staff of the Robert M.D. Clinic, pre-signed prescriptions, his giving

authorization to others to use a revoked DEA number, and the controlled substances ordered under that number, are clearly conduct and circumstance contemplated under sections 829, 841 and 843.

The Respondent's remaining argument regarding the hearsay nature of the presigned prescriptions at issue is similarly without merit. Despite the Respondent's objections to the admissibility of such evidence, it is well established that hearsay is admissible in these proceedings. See Nicholas A. Sychak, d/b/a/ Medicap Pharmacy, 65 FR 75959 (2000); Arthur Sklar, R.Ph., d/b/a King Pharmacy, 54 FR 34627 (1989). "Hearsay is both admissible, and may, standing by itself, constitute substantial evidence in support of an administrative decision." *Klinestiver v. DEA*, 606 F.2d 1128 (D.C. Cir. 1979).

In the DEA Final Order of May 1999, the then-Deputy Administrator found that any determination regarding the Respondent's fitness to obtain a DEA Certificate of Registration was contingent, not merely upon the passage of time, but whether circumstances existing at the time of the prior proceeding had sufficiently changed to warrant issuance of such registration. With the additional passage of time, and the Respondent having obtained a DEA Certificate of Registration (albeit by way of an administrative error), obviously circumstances have changed with respect to the Respondent's handling of controlled substances. The Deputy Administrator also finds it noteworthy that there is no evidence that Respondent has mishandled controlled substances under his present registration. Nevertheless, the Deputy Administrator remains unconvinced that the Respondent possesses the fitness to maintain that registration.

The Deputy Administrator agrees with Judge Bittner that the Respondent refuses to take responsibility for his past misconduct. In addition, the Respondent demonstrated irresponsible conduct by pre-signing prescription pads and providing his revoked DEA registration number for the use of his staff.

The Deputy Administrator finds the Respondent's recalcitrance puzzling. In the face of DEA's repeated concerns regarding his lack of contrition, the Respondent remains steadfast in his insistence upon denying any previous wrongdoing. Despite previous findings that his criminal convictions were *res judicata*, the Respondent in his support of his most recent application for registration attempted yet again to re-litigate his criminal convictions and

attack the quality of his previous legal representation.

In three previous final orders, DEA has essentially provided the Respondent with a roadmap to reacquiring his DEA registration by outlining concerns relating to Respondent's previous misconduct and pointing to his refusal to accept responsibility for such actions. If the Respondent were to satisfactorily address the agency's concerns, and conform his conduct accordingly, he would at the very least, improve his prospects for reacquiring and maintaining a DEA Certificate of Registration. In the absence of such reassurances, the Deputy Administrator is left with the conclusion that the Respondent remains unwilling or unable to accept the obligations that the Controlled Substances Act and its implementing regulations impose upon DEA registrants. Therefore, the Deputy Administrator concludes that the Respondent's continued registration would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.014, hereby orders that DEA Certificate of Registration BL6652312, previously issued to Robert A. Leslie, M.D., be, and it hereby is, revoked. This order is effective April 28, 2003.

Dated: March 6, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03-7390 Filed 3-27-03; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Combating Child Labor Through Education (Morocco, Uganda, Dominican Republic Timebound and the Philippines Timebound)

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of availability of funds and solicitation for cooperative agreement applications (SGA 03-01).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for cooperative agreement funding. The U.S. Department of Labor, Bureau of International Labor Affairs will award up to U.S. \$14 million through one or more cooperative agreement(s) to an organization or organizations to improve access to quality education as a means to combat

child labor in Morocco (\$3 million), Uganda (\$3 million), the Dominican Republic (\$3 million) and the Philippines (\$5 million). The activities funded will complement and expand upon existing projects and programs to improve basic education in these countries and provide access to basic education to children in areas of high incidence of exploitative child labor. Activities in the Dominican Republic and the Philippines will support and complement Timebound Programs to eliminate child labor being currently implemented in collaboration with the national governments and the International Program on the Elimination of Child Labor of the International Labor Organization (ILO/IPEC). Specific information on Timebound Programs is found in Section III.A of this document.

Applicants must submit a separate application for each country. If applications for countries are combined, they will not be considered.

DATES: The closing date for receipt of application is May 9, 2003. As discussed in Section II.B and C, applications must be received by 4:45 p.m. (Eastern Time) at the address below. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored. Telegram, facsimile (FAX), and e-mail applications will not be honored.

ADDRESSES: Application forms will not be mailed. They are published as part of this **Federal Register** Notice, and in the **Federal Register** which may be obtained from your nearest U.S. Government office or public library or online at http://www.archives.gov/federal_register/index.html.

Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N-5416, Attention: Lisa Harvey, Reference: SGA 03-01, Washington, DC 20210. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted, however, the applicant bears the responsibility for timely submission.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: harvey-lisa@dol.gov. All applicants are advised that U.S. mail delivery in the Washington DC area has been slow and erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when

preparing to meet the application deadline. It is recommended that you confirm receipt of your application with your delivery service. See Section II.C for additional information.

SUPPLEMENTARY INFORMATION: The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be granted by cooperative agreement (hereafter referred to as "grant") to one or more qualifying organizations for the purpose of promoting school attendance in areas of high and exploitative child labor in Morocco and Uganda, and in areas where Timebound Programs in the Dominican Republic and the Philippines are underway. The grant or grants awarded under this initiative will be managed by ILAB's International Child Labor Program to assure achievement of the stated goals. Applicants are encouraged to be creative in proposing cost-effective interventions that will have a demonstrable impact in promoting school attendance in areas of those countries where children are engaged in or are most at risk of working in the worst forms of child labor.

I. Authority

ILAB is authorized to award and administer this program by Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 2002, Public Law 107-116, 115 Stat. 2177 (2002).

II. Application Process

A. Eligible Applicants

Any commercial, international, educational, or non-profit organization capable of successfully developing and implementing education programs for child laborers or children at risk in the countries of interest is eligible to apply. Partnerships of more than one organization are also eligible, and applicants are strongly encouraged to work with organizations already undertaking projects in the countries of interest, particularly local NGOs and faith based-organizations. In the case of partnerships, a lead organization to sign the agreement must be identified. The capability of an applicant or applicants to perform necessary aspects of this solicitation will be determined under Section V.B Rating Criteria and Selection.

Please note that eligible grant applicants must not be classified under the Internal Revenue Code as a 501(c)(4) entity. See 26 U.S.C. 501(c)(4). According to the Lobbying Disclosure Act of 1995, as amended by 2 U.S.C. 1611, an organization, as described in section 501(c)(4) of the Internal Revenue

Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

B. Submission of Applications

One (1) ink-signed original, complete application in English plus two (2) copies (in English) of the application, must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N-5416, Washington, DC 20210, not later than 4:45 p.m. Eastern Time, May 9, 2003. Applicants may submit applications for one or more countries. In the case where an applicant is interested in applying for a grant in more than one country, a separate application must be submitted for each country.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424 "Application for Federal Assistance" and sections A-F of the Budget Information Form SF 424A, available from ILAB's Web site at <http://www.dol.gov/ILAB/grants/education/SGA0301/bkgrdSGA0301.htm>. Copies of these forms are also available online from the GSA Web site at [http://contacts.gsa.gov/webforms.nsf/0/B835648D66D1B8F985256A72004C58C2/\\$file/sf424.pdf](http://contacts.gsa.gov/webforms.nsf/0/B835648D66D1B8F985256A72004C58C2/$file/sf424.pdf) and [http://contacts.gsa.gov/webforms.nsf/0/5AEB1FA6FB3B832385256A72004C8E77/\\$file/Sf424a.pdf](http://contacts.gsa.gov/webforms.nsf/0/5AEB1FA6FB3B832385256A72004C8E77/$file/Sf424a.pdf). Part II must contain a technical application that demonstrates capabilities in accordance with the Statement of Work (Section IV.A) and Rating Criteria (Section V.B).

To be considered responsive to this solicitation, the application must consist of the above-mentioned separate sections not to exceed 45 single-sided (8½" × 11"), double-spaced, 10 to 12 pitch typed pages for each country, following the format presented in the Statement of Work (Section IV.A) and Rating Criteria (Section V.B). This requirement includes a project document submitted in the format shown in Appendix A. *Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated.* Standard forms and attachments are not included in the page limit. Each application must include a table of contents and an abstract summarizing the application in not more than two (2) pages. These pages are also not included in the page limits.

The individual signing the SF 424 on behalf of the Applicant must be authorized to bind the Applicant.

C. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at Procurement Services Center after 4:45 p.m. Eastern Time, May 9, 2003, will not be considered unless it is received before the award is made and:

1. It is determined by the Government that the late receipt was due solely to mishandling by Government after receipt at the U.S. Department of Labor at the address indicated;

2. It was sent by registered or certified mail not later than the fifth calendar day before May 9, 2003; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 pm at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to May 9, 2003.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Service Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted.

Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted, however the applicant bears the responsibility for timely submission. Confirmation of receipt can be made with Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693-4570 (this is not a toll-free-number) or e-mail: harvey-lisa@dol.gov.

D. Funding Levels

Up to U.S. \$14 million is available under this solicitation, with up to \$3 million each for the Dominican Republic, Morocco, and Uganda, and up to \$5 million for the Philippines. USDOL may award one or more grants to one, several, or a partnership of more than one organization which may apply to implement the program. Any subcontractor must be approved by USDOL.

E. Program Duration

The duration of the projects funded by this SGA is for four (4) years. The start date of program activities will be negotiated upon awarding of the grant, but no later than September 30, 2003.

III. Background and Program Scope

A. USDOL Support of Global Elimination of Child Labor

The International Labor Organization (ILO) estimated that 211 million children between the ages of five and 14 were working around the world in 2000. Full-time child workers are generally unable to attend school, and part-time child laborers balance economic survival with schooling from an early age, often to the detriment of their education. Since 1995, the U.S. Congress has provided USDOL with funds to support worldwide technical assistance programs implemented by the ILO. To date, USDOL has contributed U.S. \$157 million to ILO/IPEC, making the United States the program's largest donor and a leader in global efforts to combat child labor.

Programs funded by USDOL have evolved from targeted action programs in specific sectors to a more comprehensive approach. In June 2001, at the International Labor Conference in Geneva, new programs were launched to effectively abolish the worst forms of child labor in a five-to-ten year time frame. These programs are called "Timebound Programs" and are a technical assistance modality designed to help countries eliminate the worst forms of child labor in a defined period of time. Timebound Programs provide aid to countries to support

implementation of ILO Convention No. 182 on the Worst Forms of Child Labor.

Convention 182 lists four categories of the worst forms of child labor, and calls for immediate elimination of:

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children; debt bondage and serfdom and forced or compulsory labor; including forced or compulsory recruitment of children for use in armed conflict;
- The use, procurement or offering of a child for prostitution, production of pornography or pornographic performances;
- The use, procurement or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- Work which by its nature or by the circumstances by which it is carried out, is likely to harm the health, safety, and morals of children.

In determining the types of work likely to harm the health, safety and morals of children, Convention 182 considers the following: Work which exposes a child to physical, psychological or sexual abuse; work underground, underwater, at dangerous heights or in confined workplaces; work with dangerous machinery, equipment and tools or handling or transporting heavy loads; work in an unhealthy environment including exposure to hazardous substances, agents or processes, or to temperatures, noise levels or vibrations damaging to the health; work for long hours or night work where the child is unreasonably confined to the premises.

The Timebound Program is designed to be a country-owned initiative. Participation implies commitment by a country to mobilize and allocate national human and financial resources to combat child labor. USDOL-supported programs assist governments in this process by identifying and supporting projects, measures, interventions, institutional mechanisms, and partnerships required to eliminate the worst forms of child labor.

Between FY 2001 and FY 2003, in addition to U.S. \$135 million earmarked for ILO/IPEC efforts, U.S. \$111 million was appropriated to USDOL for a Child Labor Education Initiative to fund programs aimed at increasing access to quality, basic education in areas with a high incidence of abusive and exploitative child labor. The grant(s) awarded under this solicitation will be funded through this initiative.

USDOL's Child Labor Education Initiative seeks to nurture the development, health, safety and

enhanced future employability of children around the world by increasing access to basic education for children removed from work or at risk of entering into labor. Child labor elimination depends in part on improving access to, quality of, and relevance of education.

The Child Labor Education Initiative has four goals:

1. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;
2. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;
3. Strengthen national institutions and policies on education and child labor; and
4. Ensure the long-term sustainability of these efforts.

B. Barriers to Education for Working Children and Country Background

1. Child Labor and Barriers of Access to Education

Throughout the world there are complex causes to child labor as well as barriers to education for children engaged in or at risk of working. These include:

- Poverty—whereby families need children's income for survival, there is a high opportunity cost to enrolling a child in school, and the direct and indirect costs of schooling are unaffordable.
- Education system barriers—which include low quality and relevance of education and curricula; low teacher training/preparation of school personnel to address education of children with special needs, such as child laborers; poor teaching methods; lack of or weak systems to address reintegration of dropouts, or to provide equivalency and/or bridge programs between non-formal and formal or vocational education.
- Infrastructure barriers—which include distance to school; inadequate school buildings (too small, too few primary, secondary or vocational schools); overcrowded schools; lack of open spaces for physical activity and related facilities; lack of transportation; lack of latrines, water, electricity and other basic infrastructure.
- Legal and policy barriers—which include policies that discourage school enrollment and retention, weak law enforcement, or non-existent, inconsistent or inadequate education policies for working children.
- Resource gaps—which include either overall low level of resources

within the country, or a low allocation of existing resources relative to the needs of working children, or to child labor eradication or education goals set by government policies.

- Institutional barriers—which include weaknesses that hamper an organization's ability to effectively implement programs, and/or limited coordination among social partners (various level of government, NGOs, private sector) to match existing resources to education gaps and needs of working children.
- Informational gaps—which include lack of information on the education needs of child laborers or their educational performance so as to develop relevant and targeted programs; lack of available relevant social indicator data to identify, target and map families with working children; lack of consistent monitoring and evaluation of programs to draw lessons learned, or limited awareness on the part of different actors of the benefits of education for working children.
- Demographic characteristics of children and/or families—which include factors that put a child at higher risk of child labor and lack of access to education, such as belonging to an ethnic group, gender or social class, family composition (*e.g.*, single head of household or polygamous household, multiple siblings, etc.), being overage relative to grade.
- Cultural and traditional practices—which include community attitudes that children should work and help the family, and attitudes and practices towards gender and social roles.
- Weak labor markets and lack of employment for those more educated, which diminish the perceived value of an education, and increase the value of early entry into the labor market.

Although these elements and characteristics tend to exist throughout the world in areas of high child labor, they manifest themselves and/or combine in particular ways in each country of interest in this solicitation. In their response to the solicitation, applicants should be able to identify the specific barriers to education and the education needs of specific children targeted in their project (*e.g.*, children withdrawn from work, children at high risk of drop out into the labor force, children still working in a particular sector, etc.). Short background information on education and child labor in each of the countries of interest is provided below. For additional information on child labor in these countries, applicants are referred to The Department of Labor's 2001 Findings on the Worst Forms of Child Labor

available at <http://www.dol.gov/ILAB/media/reports/iclp/tda2001/overview.htm> or in hard copy from Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693-4570 (this is not a toll-free-number) or e-mail: harvey-lisa@dol.gov.

2. Country Background

The Dominican Republic

The Dominican Republic's National Child Labor Survey (*Encuesta Nacional de Trabajo Infantil*), published in 2002, estimated that 18 percent of children between the ages of five and 17 years (428,720) are working. The major sectors where children work are agriculture, services in the informal sector (shoe shiners, street vendors), domestic service, and prostitution. In addition, reports indicate that Haitian children may be found working in the Dominican Republic on sugarcane plantations and in other hazardous occupations, and have documentation and likely language barriers to education. There are also reports that some Haitian children have been trafficked to the Dominican Republic, including for purposes of child labor.

Between 1992 and 2002, the Dominican Secretariat of Education (*Secretaría de Estado de Educación*) engaged in a ten-year reform program (Plan Decenal) that included goals of increasing educational access, improving quality, implementing curriculum reform, improving the social and economic conditions of teachers, approving a new education law, decentralization, increased community participation, and increased financial resources. The plan, funded by the World Bank and the Inter-American Development Bank, greatly increased educational access for more children, but improvements are still needed in the areas of educational quality, teacher training, teacher living conditions, implementation of the education law, parent/community participation, and budget. Basic education in the Dominican Republic is free and compulsory between the ages of five and 14.

In spite of large investments in the education system, many gaps and challenges remain that hamper efforts to prevent child labor through education, and provide access to education for child laborers. These include a highly centralized education administration, lack of school access in rural areas, lack of vocational schools, and a less than adequate system for measuring and monitoring education results.

Moreover, lack of official identity papers and documentation are serious

barriers to school enrollment and affects thousands of children most vulnerable to child labor—rural children, and those of Haitian descent. Several programs have been developed to address the problem of lack of documentation, but none has been broadly successful.

Many Dominican teachers lack motivation to improve their teaching style or to comply with school schedules because of low salaries. Teacher strikes for higher pay are frequent. Time in-class and time spent on learning tasks are lower in the Dominican Republic than in most other Latin American countries. Teachers in rural areas may also miss school because of transportation difficulties. In most Dominican classrooms there is a lack of active, participatory, student-centered pedagogy. Also, teachers are not prepared to deal with children with special needs such as those of working children, and children at risk of or engaged in commercial sexual exploitation.

There are limited alternatives to the public schools since there are few NGOs specializing in education. Also, Dominican NGOs operate under an obsolete law dating from 1920. Furthermore, the high levels of overage students relative to grade discourages many children from continuing altogether, and results in permanent desertion and premature entry into labor.

The Government of the Dominican Republic has committed itself to the implementation of a Timebound Program to eliminate the worst forms of child labor. The funding provided by this award will provide resources for the education component of the Timebound Program funded by USDOL and implemented through the ILO/IPEC.

Morocco

According to a 1999 diagnostic by the Ministry of Employment and the ILO, there are approximately 9.8 million children in Morocco under the age of 15, and approximately 6.5 percent of children in this age group work. About 90 percent of working children are in rural areas in the agriculture sector, often in animal husbandry and other agricultural tasks. Children also work as weavers in the carpet industry; in small family-run workshops that produce ceramics, woodwork, and leather goods; and as mechanics, porters, tourist guides, street vendors, and beggars. Children work as apprentices before they reach 12 years of age, particularly in the informal handicraft industry. In urban areas, girls work as domestic servants, often in situations of unregulated "adoptive servitude," and

teenagers are reported to engage in prostitution. Street children engage in diverse forms of work including selling cigarettes, begging, shining shoes and other miscellaneous occupations. It is estimated that 90 percent of working children are between the ages of 10 and 14, and 50 percent are victims of abuse and work more than 50 hours a week.

Morocco has identified education as a major component of the national and sectoral plans to combat child labor produced by the Ministry of Employment. It has also outlined its strategy for education reform in a national Charter that focuses on increasing educational access, reducing educational disparities, and involving different social sectors in partnerships for education. Education is free and compulsory between the ages of six and 15. The government has targeted universal primary enrollment by 2005–2006, and universal secondary education by 2008–2009.

Despite the progress made in increasing access to basic education in Morocco, the Ministry of National Education estimates that approximately 2 million children between the ages of eight and 16 have either never attended school or dropped out before completing the first level. The ILO/IPEC estimates that 80 percent of working children in Morocco are out of school. Ensuring their access to education will need to be addressed if Morocco is to meet its national goal of enrolling all children aged 12–14 in secondary school by 2008–2009. The Ministry of National Education's Non-Formal Program, working in partnership with an active NGO community, has reached only approximately 113,545 children aged eight to 15 since 1997. Although 70 percent of children who enter the non-formal program complete it, only about 10 percent transition into the formal system. The Government of Morocco has recently created a State Secretariat for Literacy and Non-Formal Education to address many of the issues facing out-of-school children.

The funding provided by this solicitation will contribute to addressing these important challenges. Applicants are strongly encouraged to address their efforts to areas of the highest concentrations of child labor (*i.e.*, agriculture), and sectors in rural and urban areas with the worst forms of child labor.

The Philippines

Child labor in the Philippines is set primarily in the context of poverty, with 31.8 percent of Filipino families living below the poverty line in 1997, compared to 33.7 percent in 2000. The

increase in the number of families living in poverty has contributed to the rise in the number of working children. In 2001, the Philippine National Statistics Office estimated that 4 million children between the ages of five and 17 were working, or 16.2 percent of children in this age group. This figure accounts for a 12 percent increase in the number of working children since 1995.

Children work predominantly in rural areas. Almost half of all child workers are engaged in agricultural activities, while other children work in informal footwear production, drug trafficking, pyrotechnics production, deep-sea fishing, mining and quarrying, and pearl farming. In the informal sector children are engaged in scavenging and begging. Children are also engaged as domestic servants and are involved in the commercial sex industry.

Since 1991, the Education for All (EFA) strategy has been a cornerstone of the Philippine's plan of action to improve the public education system, but government plans to address the particular needs of working children are limited. There are numerous gaps in the public education system and other socio-cultural or institutional barriers that may prevent children engaged in or at risk of working in the worst forms of child labor from receiving quality and relevant basic education. While significant achievements have been made in combating child labor and promoting basic education, there is a need to link these efforts and address issues related to the provision of education for children working or at risk of working.

The current National Development Plan for 2001–2004 includes universal primary education as a goal. From 1991 to 1998, primary net enrollment rates in the Philippines increased from 85 percent to 96 percent. The increase in enrollment rates reflects the government's commitment to providing universal primary education, but there are still challenges related to strengthening the quality and relevance of education, which is key to the retention of children in the school system. Currently, an estimated 69 percent of children who enter primary school in the Philippines reach grade 5.

In addition, the impact of education reforms has not yet been fully extended to children vulnerable to child labor. Even though formal education is free and compulsory for six years, families are often expected to shoulder other associated costs such as food, uniforms, school supplies, transportation, and, in some instances, fees for capital outlays or building maintenance (*e.g.*, janitorial services, toilets, and electricity). With

many parents' earnings falling below the poverty line, the inability of public schools to subsidize these extra costs places considerable economic strain on families. As a result, high costs to schooling limit access to education, negatively impact school attendance, and may contribute to the increase in the labor supply of children.

The Government of the Philippines is dedicated to the elimination of the worst forms of child labor within a specified period, and has committed to a Timebound Program to combat child labor. USDOL expects the funding provided by this award to address some of the educational challenges within the Timebound Program framework, and the applicant will support education activities undertaken as part of USDOL's funding of the Philippines Timebound Program, which is being implemented through ILO/IPEC. These education activities must complement and reinforce the existing Timebound strategy, but not duplicate efforts already funded by USDOL through ILO/IPEC.

Direct services of the already-funded ILO–IPEC education component of the Timebound Program will concentrate primarily on the provision of non-formal, transitional and vocational education to children withdrawn from work and those at-risk of working in the sectors targeted by the Timebound Program. These activities correspond to gaps identified in the existing system. For example, until very recently, the Department of Education's Bureau of Non-Formal Education only offered non-formal education programs to out-of-school youths aged 15 and above. Although it is currently preparing to offer non-formal education to children ages 6 to 14, the Bureau lacks the funds to develop appropriate curricula and learning modules. An additional challenge to providing transitional education is that children in non-formal programs frequently experience difficulty mainstreaming into formal education, such as passing an equivalency test required for re-entry in formal schooling.

Uganda

An ILO–IPEC child labor report based on the 2000–2001 Uganda Demographic and Health Survey estimated the total number of working children aged 5 to 17 years in the country at 2.9 million, accounting for 34.2 percent of all children in this age group. Furthermore, the report estimated that more than half of all working children in Uganda are aged 10–14 years. The Ministry of Gender, Labour and Social Development (MGLSD) has drafted a national policy

and plan of action to combat the worst forms of child labor, including children engaged in commercial agriculture, fishing, domestic labor, the informal sector, street activities, commercial sexual exploitation, construction sector, and children in armed conflicts.

USDOL has targeted several of these sectors through programs implemented by ILO/IPEC. USDOL has also financed surveys on child labor in Uganda. Recognizing that forced and compulsory recruitment of children in armed conflict is a worst form of child labor as identified in ILO Convention 182, USDOL, through funding provided by this solicitation, seeks to support the education needs of this population in northern Uganda.

In addition to the MGLSD, the Ministry of Education has been engaged in efforts to eliminate the worst forms of child labor. In 1997 this ministry instituted a policy of Universal Primary Education (UPE) to make formal schooling more affordable and thus more available to students in Uganda. Since the implementation of this policy, enrollment has increased dramatically, from 3.4 million in 1996 to 7.2 million in 2002.

Unfortunately, much of the success of this program has been concentrated in the south. Sixteen years of war in northern Uganda has hindered the full implementation of UPE, and has created enormous barriers for young people living in these areas to gain access to and complete quality primary education. Since the birth of the Lord's Resistance Army's (LRA) rebel campaign in 1986, between 10,000–15,000 Ugandan children have been abducted to serve as porters and soldiers for this rebel group. Abducted girls often suffer the added trauma of rape, and are frequently given to rebel commanders as sexual slaves.

In addition, at least half of the population living in areas of conflict in northern Uganda (a majority of whom are adolescents and children) is internally displaced. Escalated LRA attacks since the beginning of 2000 have forced an increasing number of people to seek refuge in Internally Displaced Persons' (IDP) Camps called "Protected Villages," or, alternatively, in the towns of Gulu and Kitgum. According to the World Food Program (WFP), 26.4 percent of the IDPs living in camps are children aged five to 14 years old. The majority of these children have been out of school since the conflict escalated in July 1996. Although national primary enrollment averages 95 percent for all children aged six to 13 years, less than 30 percent of school-age children in IDP camps are currently enrolled on a full-

time basis, with young girls especially affected.

According to the Uganda People's Defense Forces (UPDF) Fourth Division Commander in Gulu, over 300,000 children in northern Uganda are unable to go to school at present. Low enrollment and retention in war-affected areas is the result of several complex and interrelated factors. Stress levels among children have dramatically increased because of displacement, separation, death, violence, abduction and sexual abuse. For formerly abducted children and child soldiers this trauma is particularly acute. Girls are especially affected, as they often return from captivity with babies. In addition, both former child soldiers and war-affected children returning to school after a long absence find themselves in the difficult position of being older than their classmates and having missed years of schooling. This situation leads them to either not return to school, or to drop out after they re-enroll.

Despite government incentives to local teachers and a teacher training college located in Gulu, northern Uganda is also suffering from a shortage of educators. The few remaining teachers are often unequipped to accommodate the many special needs of their students. Furthermore, for many children, the cost of purchasing school supplies and the opportunity cost of attending school is too great. Although some young people have expressed an interest in learning skills or a trade, most technical training colleges require a level of academic achievement that former child soldiers and war-affected children have not attained. Furthermore, many young people lack the basic literacy skills needed to succeed in formal training programs.

Nonetheless, the commitment to and desire for education among these young people and their communities is considerable. Education is often the top priority identified by communities immediately following an attack or displacement. The Government of Uganda has responded through the provision of several new policies and programs. The Ministry of Education has drafted strategies for working with children living in areas of conflict in a Basic Education Policy and Costed Framework For Educationally Disadvantaged Children. The policy aims to increase community participation in education; strengthen linkages between formal and non-formal education; improve education quality by ensuring appropriate infrastructure and curriculum content and methodology, and provide appropriate learning materials. The Ministry of Education

and the Ministry of Gender, Labour, and Social Development have established a multi-agency working group to address the needs of children who have suffered from armed conflict. Several international and local NGOs have also developed programs focusing on the rehabilitation and reintegration of former child soldiers and war-affected children.

However, there is a great need to expand and improve upon efforts to educate and train former child soldiers and war-affected children. The work undertaken by government entities and international and local NGOs working on the ground provide a solid foundation, but gaps remain in current efforts to provide access to quality education. Areas requiring further development include: (1) Non-formal education, catch-up classes, and basic literacy training (2) skills and vocational training, (3) teacher training and recruitment, (4) the development of appropriate curricula, materials and teaching methods and the provision of school supplies, and (5) community mobilization and sensitization to meet the education needs and psychosocial needs of children and adolescents in northern Uganda. The funding provided by this solicitation encourages applicants to propose solid approaches that will address these needs.

Given the complex unique social situation of these children, USDOL encourages collaboration with programs in northern Uganda working on issues of poverty, health and nutrition, community development, peace and security. USDOL encourages models that work within existing government structures and national plans of action. USDOL seeks to fund sustainable programs that provide for the emerging educational needs of these children as northern Uganda transitions towards peace. Applicants should be ready to adapt services to accommodate the fluidity and constantly changing nature of the security situation, and related migration flows.

IV. Requirements

A. Statement of Work

Taking into account the challenges to educating working children in each country of interest, the applicant shall propose and implement creative and innovative approaches to provide educational opportunities to children engaged in or removed from child labor, particularly the worst forms. The expected outcomes/results of the project are to: (1) Increase educational opportunities (enrollment) for children who are engaged in, at risk of, and/or

removed from child labor, particularly its worst forms; (2) encourage retention in, and completion of educational programs; and (3) expand the successful transition of children in non-formal education into formal schools or vocational programs.

In the course of implementation, each project shall promote the goals of USDOL's Child Labor Education Initiative listed in Section III.A above. Because of the limited available resources under this award, applicants should implement programs that complement existing efforts and, where appropriate, replicate or enhance successful models to serve expanded numbers of children and communities. In order to avoid duplication, enhance collaboration, expand impact, and develop synergies, the grant awardee (hereafter referred to as "Grantee") should work cooperatively with national stakeholders in developing project interventions.

Although USDOL is open to all proposals for innovative solutions to address the challenges of providing increased access to education to the children targeted, the applicant must, at a minimum, prepare responses following the outline of a preliminary project document presented in Appendix A. This response will be the foundation for the final project document that will be approved after award of the grant.

Note To Timebound Applicants: In preparing responses for the Dominican Republic and the Philippines, the applicant should be aware that the funding provided by this award is part of USDOL commitments to comprehensive and integrated Timebound Programs to prevent and remove children from the worst forms of child labor. The Grantee will be required to integrate and closely coordinate the project's interventions with the strategies and activities developed by the ILO/IPEC and the Governments of the Dominican Republic and the Philippines.

Achieving seamless integration between program components will require working with the same target groups/number of children, to the greatest degree possible with the same children, and in the same geographical areas identified in the ILO-IPEC Timebound Program documents. Applicants are strongly encouraged to read and become familiar with the design elements of the Timebound Programs funded through ILO/IPEC in the Dominican Republic and the Philippines before preparing a response to this solicitation, and strengthen the quality rather than duplicate activities that are already being funded. Applicants should carefully study the ILO/IPEC Timebound project

documents in the Dominican Republic and the Philippines available at <http://www.dol.gov/ILAB/grants/education/SGA0301/bkgrdSGA0301.htm> to become familiar with the education interventions ILO/IPEC will be implementing before proposing their own. Applicants should avoid duplicating activities being carried out by ILO/IPEC, but are highly encouraged to propose approaches that could complement and improve the quality and impact of ILO/IPEC education interventions.

In the Philippines, target children include those at risk of work or working in agriculture, deep-sea fishing, domestic service, commercial sexual exploitation, mining and quarrying, and pyrotechnics. The geographical coverage of the program in the Philippines will include the following regions and provinces: Region III (Bulacan), Region V (Camaranes Norte), Region VI (Ilo Ilo and Negros Occidental), Region VII (Negros Oriental and Cebu), Region XI (Davao), and the National Capital Region (Metro Manila). Applicants are strongly encouraged to focus their major interventions in facilitating mainstreaming into formal education for children withdrawn from work or at risk of working; strengthening formal education to prevent drop out of identified vulnerable children into child labor; and providing an approach to improve quality in non-formal education so as to better transition children removed from child labor to formal education or vocational options.

In the Dominican Republic, the *Consejo Nacional de Trabajo* (The National Committee on the Eradication of Child Labor) has defined specific geographic areas for the Timebound Program: Santo Domingo, Duarte, La Vega, Maria Trinidad Sanchez, Monseñor Nouel, Puerto Plata, Sanchez-Ramirez and Samaná. Also, child labor Timebound Program activities aimed at the worst forms of child labor are already underway in Boca Chica and Constanza. The Committee has defined commercial sexual exploitation, hazardous informal work, and hazardous agricultural activities as the worst forms of child labor. Approaches should address the gaps and barriers to education faced by children in these forms of employment in the Dominican Republic.

In Timebound Programs, key personnel will work closely with the ILO/IPEC's National Program Manager and the Timebound Program Chief Technical Adviser, and as appropriate, with staff of the national government in developing project interventions.

Note to All Applicants: The Grantee is expected to consult with and work cooperatively with stakeholders in the countries, including the Ministries of Education and Labor, NGOs, national steering/advisory committees on child labor education, faith-based organizations, and working children and their families. Where practical, there should be efforts to work with existing projects, particularly those funded by USDOL.

B. Deliverables

In addition to meeting the above requirements, the Grantee will be expected to monitor the implementation of the program, report to USDOL on a quarterly basis, and undergo evaluation of program results. Guidance on USDOL procedures and management requirements will be provided to the Grantee in written Management Procedures and Guidelines (MPG) after award. The project budget must include funds to plan, implement and evaluate programs and activities, conduct various studies pertinent to project implementation, to establish education baselines to measure program results, and travel to meet with USDOL officials in Washington at yearly intervals. Corresponding indicators of performance will also be developed by the Grantee and approved by USDOL. Unless otherwise indicated, the Grantee must submit copies of all required reports to ILAB by the specified due dates. Specific deliverables are the following:

1. Project Design Document

The Grantee will prepare a preliminary project document in the format described in Appendix A, with design elements linked to a logical framework matrix. See <http://www.dol.gov/ILAB/grants/education/SGA0301/bkgrdSGA0301.htm> for a worked example. The project document will include a background/justification section, project strategy (goal, purpose, outputs, activities, indicators, means of verification, assumptions), project implementation timetable and project budget. The narrative will address the criteria/themes described in Section V.B.1 below Program Design/Budget-Cost Effectiveness. The final project design document will be based on the application written in response to this solicitation, but will include the results of additional consultation with stakeholders, partners, and ILAB. The document will also include sections that address coordination strategies, project management and sustainability. The final project document will be delivered three months after the time of the award.

2. Technical and Financial Progress Reports

The format for the technical progress report will be provided in the MPG distributed after the award. The Grantee must furnish a typed technical report to ILAB on a quarterly basis by 31 March, 30 June, 30 September, and 31 December. Technical reports will include:

a. For each project objective, an accurate account of activities carried out under that objective during the reporting period;

b. A description of current problems that may impede performance, and proposed corrective action;

c. Future actions planned in support of each project objective;

d. Aggregate amount of costs incurred during the reporting period relative to each objective; and

e. Progress on common Government Performance and Results Act indicators (to be reported *semi-annually*) to be provided to Grantees after award.

The Grantee must also furnish separate financial reports (SF 272 and 269) to ILAB on the quarterly basis mentioned above.

3. Annual Work Plan

An annual work plan will be developed within three months of project award and approved by ILAB so as to ensure coordination with other relevant social actors in the country. Subsequent annual work plans will be delivered no later than one year after the previous one.

4. Performance Monitoring and Evaluation Plan

A performance monitoring and evaluation plan will be developed, in collaboration with ILAB, including beginning and ending dates for the project, planned and actual dates for mid-term review, and final end of project evaluations. The performance monitoring plan will be developed in conjunction with the logical framework project design and common indicators for GPRA reporting selected by ILAB. Baseline data collection will be tied to the indicators of the project design document and the performance monitoring plan. A draft monitoring and evaluation plan will be submitted to ILAB within four months of project award.

5. Project Evaluation

The Grantee and the Grant Officer's Technical Representative (GOTR) will determine on a case-by-case basis whether mid-term evaluations will be conducted by an internal or external evaluation team. All final evaluations

will be external in nature. The Grantee must respond in writing to any comments and recommendations resulting from the review of the mid-term report. The budget must include the projected cost of mid-term and final evaluations.

C. Production of Deliverables

1. Materials Prepared Under the Cooperative Agreement

The Grantee must submit to ILAB all media-related and educational materials developed by it or its sub-contractors before they are reproduced, published, or used. ILAB considers that education materials include brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program. ILAB will review materials for technical accuracy. The Grantee must obtain prior approval from the Grant's Officer Technical Representative for all materials developed or purchased under this grant. All materials produced by the Grantee must be provided to ILAB in digital format for possible publication by ILAB.

2. Acknowledgement of USDOL Funding

In all circumstances, the following must be displayed on printed materials: "Preparation of this item was funded by the United States Department of Labor under Cooperative Agreement No. E-9-X-X-XXXX."

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all Grantees receiving Federal funds, including State and local governments and recipients of Federal research grants, must clearly state:

a. The percentage of the total costs of the program or project that will be financed with Federal money;

b. The dollar amount of Federal funds for the project or program; and

c. The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

In consultation with ILAB, USDOL will be acknowledged in one of the following ways:

a. The USDOL logo may be applied to USDOL-funded material prepared for worldwide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. The Grantee must consult with USDOL on whether the logo may be used on any such items prior to final

draft or final preparation for distribution. In no event will the USDOL logo be placed on any item until USDOL has given the Grantee written permission to use the logo on the item.

b. If ILAB determines that the use of the logo is not appropriate and written permission is not given, the following notice must appear on the document: "This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

D. Administrative Requirements

1. General

Grantee organizations are subject to applicable U.S. Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. Determinations of allowable costs will be made in accordance with the applicable U.S. Federal cost principles. The grantee will also be required to submit to a bi-annual independent audit, and costs for such an audit should be included in direct or indirect costs, whichever is appropriate.

The grant awarded under this SGA is subject to the following administrative standards and provisions, if applicable:

29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

29 CFR Part 93—New Restrictions on Lobbying.

29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

29 CFR Part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

Applicants are reminded to budget for compliance with the administrative requirements set forth. This includes the cost of performing administrative activities such as financial audit, closeout, evaluation, document preparation, as well as compliance with procurement and property standards.

Copies of all regulations referenced in this SGA are available at no cost, on-line, at www.dol.gov.

2. Sub-Contracts

Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. In compliance with Executive Orders 12876, as amended, 13230, 12928 and 13021, as amended, the Grantee is strongly encouraged to provide sub-contracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities.

3. Key Personnel

The applicant shall list an individual(s) who has been designated as having primary responsibility for the conduct and completion of all project work. The applicant must submit written proof that key personnel will be available to begin work on the project no later than three weeks after award. The Grantee agrees to inform the GOTR whenever it appears impossible for this individual(s) to continue work on the project as planned. The Grantee may nominate substitute personnel and submit the nominations to the GOTR; however, the Grantee must obtain prior approval from the Grant Officer for all key personnel. If the Grant Officer is unable to approve the personnel change, he/she reserves the right to terminate the grant.

4. Encumbrance of Grant Funds

Grant funds may not be encumbered/obligated by the Grantee before or after the period of performance. Encumbrances/obligations outstanding as of the end of the grant period may be liquidated (paid out) after the end of the grant period. Such encumbrances/obligations shall involve only specified commitments for which a need existed during the grant period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the Grantee's purchasing procedures and incurred within the grant period. All encumbrances/obligations incurred during the grant period shall be liquidated within 90 days after the end of the grant period, if practicable.

5. Site Visits

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the Grantee

or a sub-contractor(s) under this grant, the Grantee shall provide and shall require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of Government representatives in the performance of their duties. All site visits and evaluations shall be performed in a manner that will not unduly delay the work.

V. Review and Selection of Applicants for Award

A. The Review Process

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. Each complete application will be objectively rated by a technical panel against the criteria described in this announcement. Applicants are advised that panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select a Grantee on the basis of the initial application submission; or, the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of applications, the evaluations process described above will be repeated to consider such revisions. The Grant Officer will make final selection determination based on panel findings and consideration of factors that may be most advantageous to the Government, such as geographic distribution of the competitive applications, cost, the availability of funds and other factors. The Grant Officer's determination for award under this SGA is final.

Note: Selection of an organization as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant is awarded, USDOL may enter into negotiations about such items as program components, funding levels, and administrative systems in place to support grant implementation. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application. Award is also contingent upon signature of a letter of agreement between USDOL and relevant ministries in target countries.

B. Rating Criteria and Selection

The technical panel will review applications written in the specified format (see Section III.B and Appendix A) against the various criteria on the basis of 100 points. Five additional points will be given for non-federal or leveraged resources. Applicants are

requested to prepare their written response (45 page maximum) on the basis of the following rating factors, which are presented in the order of emphasis that they will receive.

Program Design/Budget-Cost Effectiveness—45 points
Organizational Capacity—30 points
Management Plan/ Key Personnel/ Staffing—25 points
Leveraging—5 extra points

1. Project/Program Design/Budget-Cost Effectiveness (45 points)

This part of the application constitutes the preliminary project document described in section IV.B.1 and outlined in Appendix A. (Note: The supporting logical framework matrix will not count in the 45-page limit but should be included as an annex to the project document. To guide applicants, a sample logical framework matrix for a hypothetical child labor education project is available at <http://www.dol.gov/ILAB/grants/education/SGA0301/bkgrdSGA0301.htm>. The applicant should describe in detail the proposed approach to comply with each requirement in Section IV.A of this solicitation.

This component of the application should demonstrate the applicant's thorough knowledge and understanding of the issues, barriers and challenges involved in providing education to children engaged in or at risk of engaging in child labor, particularly its worst forms; best-practice solutions to address their needs; and the implementing environment in the selected country. When complying with the project document outline, the applicant should at minimum include a description of:

- **Children Targeted**—The applicant will identify which and how many children will benefit from the project, including the sectors in which they work, geographical location, and other relevant characteristics. Note: Timebound country applicants must target the sectors, geographical areas, and children identified in Timebound Project documents.

- **Needs/Gaps/Barriers**—The applicant will describe the specific gaps/educational needs of the children targeted that the project will address.

- **Proposed Strategy**—The applicant will discuss the proposed strategy to address gaps/needs/barriers and its rationale.

- **Description of Activities**—The applicant will provide a detailed description of proposed activities that relate to the gaps/needs/barriers to be addressed including training and technical assistance to be provided to

project staff, host country nationals, and community groups involved in the project. Ideally, the proposed approach should build upon existing activities, and government policies and plans and avoid needless duplication.

- **Work Plan**—The applicant will provide a detailed work plan and timeline for the proposed project, preferably with a visual such as a Gantt chart.

- **Program Management and Performance Assessment**—The applicant will describe: (1) How management will ensure that the goals and objectives will be met; (2) how information and data will be collected and used to demonstrate the impacts of the project; and (3) what systems will be put in place for self-assessment, evaluation and continuous improvement. USDOL has already developed common indicators and a database system for monitoring children's educational progress that can be used and adapted by Grantees after award so that they do not need to set up this type of system from scratch.

- **Budget/Cost Effectiveness**—The applicant will show how the budget reflects program goals and design in a cost-effective way so as to reflect budget/performance integration. The budget should be linked to the activities and outputs of the implementation plan listed above. This section of the application should explain the costs for performing all of the requirements presented in this solicitation, and for producing all required reports and other deliverables. Costs must include labor, equipment, travel, audits, evaluations, and other related costs. Preference may be given to applicants with low administrative costs, and all costs should be reported as they will become part of the cooperative agreement upon award. This section will be evaluated in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in Section III of this solicitation. Applicants are advised that customs and Value Added Tax (VAT) exemptions may not be allowed, and should take into account such costs in budget preparation. If major costs are omitted, the Grantee may not be allowed to include them later.

2. Organizational Capacity (35 points)

The applicant should present the qualifications of the organization(s) implementing the program/project. The evaluation criteria in this category are as follows:

a. **International Experience**—The organization applying for the award has international experience implementing basic, transitional, non-formal or vocational education programs that address issues of access, quality, and policy reform for vulnerable children including children engaged in or at risk of child labor, preferably in the country of interest or neighboring countries.

b. **Country Presence**—An applicant must demonstrate a country presence, or the capability to establish a country presence, independently or through a relationship with another organization(s) with country presence, which gives it the capability to work directly with government ministries, educators, civil society leaders, and other local faith-based or community organizations. Applicants without country presence must provide evidence that legal country presence can be established within 90 days of award. For applicants that do not have independent country presence, documentation of the relationship with the organization(s) with such a presence must be provided, or the capacity to establish such a relationship within 90 days of award.

c. **Fiscal Oversight**—The organization shows evidence of a sound financial system. The results of the most current independent financial audit must accompany the application, and applicants without one will not be considered.

d. **Coordination**—If two or more organizations are applying for the award in the form of a partnership, they must demonstrate an approach to ensure the successful collaboration including clear delineation of respective roles and responsibilities. The applicants must also identify the lead organization (Grantee) and submit the partnership agreement. Partners of the Grantee will be designated as contractors or sub-contractors.

The application must include information about previous grant or contracts of the applicant and partners that are relevant to this solicitation including:

1. The organizations for which the work was done;
2. A contact person in that organization with their current phone number;
3. The dollar value of the grant, contract, or cooperative agreement for the project;
4. The time frame and professional effort involved in the project;
5. A brief summary of the work performed; and
6. A brief summary of accomplishments.

This information on previous grants and contracts held by the applicant and partners shall be provided in appendices and will not count in the maximum page requirement.

3. Management/Plan/Key Personnel/Staffing (25 points)

Successful performance of the proposed work depends heavily on the management skills and qualifications of the individuals committed to the project. Accordingly, in its evaluation of each application, USDOL will place emphasis on the applicant's management approach and commitment of personnel qualified for the work involved in accomplishing the assigned tasks. This section of the application must include sufficient information to judge management and staffing plans, and the experience and competence of program staff proposed for the project to assure that they meet the required qualifications. Information provided on the experience and educational background of personnel should include the following:

a. The identity of key personnel assigned to the project. "Key personnel" are staff who are essential to the successful operation of the project and completion of the proposed work and, therefore, may not be replaced or have hours reduced without the approval of the Grant Officer.

b. The educational background and experience of all staff to be assigned to the project.

c. The special capabilities of staff that demonstrate prior experience in organizing, managing and performing similar efforts.

d. The current employment status of staff and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed or is dependent upon planned recruitment or sub-contracting.

Note that management and professional technical staff members comprising the applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance are proposed, organizational control should be clearly delineated to ensure responsiveness to the needs of USDOL. Key personnel must sign letters of agreement to serve on the project, and indicate availability to commence work within three weeks of grant award.

In this section, the following information must be furnished:

a. Key personnel—For each country for which an application is submitted, the applicant must designate the key personnel listed below. If key personnel are not designated, the application will not be considered.

i. A Project Director (Key Personnel) to oversee the project and be responsible for implementation of the requirements of the grant. The Program Director must have a minimum of three years of professional experience in a leadership role in implementation of complex basic education programs in developing countries in areas such as education policy; improving educational quality and access; educational assessment of disadvantaged students; development of community participation in the improvement of basic education for disadvantaged children, and monitoring and evaluation of basic education projects. Points will be given for candidates with additional years of experience including experience working with officials of ministries of education and/or labor. Preferred candidates will also have knowledge of child labor issues, and experience in the development of transitional, formal, and vocational education of children removed from child labor and/or victims of the worst forms of child labor. Fluency in English is required and working knowledge of the official language(s) spoken in the target countries is preferred.

ii. An Education Specialist (Key Personnel) who will provide leadership in developing the technical aspects of this project in collaboration with the Project Director. This person must have at least three years experience in basic education projects in developing countries in areas including student assessment, teacher training, educational materials development, educational management, and educational monitoring and information systems. This person must have experience in working successfully with ministries of education, networks of educators, employers' organizations and trade union representatives or comparable entities. Additional experience with child labor/education policy and monitoring and evaluation is an asset. Working knowledge of English preferred, as is a similar knowledge of official language(s) spoken in the target country.

b. Other Personnel—The applicant must identify other program personnel proposed to carry out the requirements of this solicitation.

c. Management Plan—The management plan must include the following:

i. A description of the functional relationship between elements of the project's management structure;

ii. The identity of the individual responsible for project management and the lines of authority between this individual and other elements of the project.

d. Staff Loading Plan—The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimated for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks should be charted to show time required to perform them by months or weeks.

e. Roles and Responsibilities—The applicant must include a resume and description of the roles and responsibilities of all personnel proposed. Resumes must be attached in an appendix. At a minimum, each resume must include: the individual's current employment status and previous work experience, including position title, duties, dates in position, employing organizations, and educational background. Duties must be clearly defined in terms of role performed, *e.g.*, manager, team leader, consultant, etc. Indicate whether the individual is currently employed by the applicant, and (if so) for how long.

4. Leverage of Grant Funding (5 points)

The Department will give up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the dollar amount, size and scope of the application. These programs will not be financed by the project, but can complement and enhance project objectives. Applicants are also encouraged to leverage activities such as micro-credit or income generation projects for adults that are not directly allowable under the grant. To be eligible for the additional points, the applicant must list the source(s) of funds, the nature, and possible activities anticipated with these funds under this grant and any partnerships, linkages or coordination of activities, cooperative funding, etc.

Signed at Washington, DC, this 21st day of March, 2003.

Lawrence J. Kuss,
Grant Officer.

Appendix A: Project Document Format

Executive Summary

1. Background and Justification
2. Target Groups
3. Program Approach and Strategy
 - 3.1 Narrative of Approach and Strategy (and linked to Logical Framework matrix)
 - 3.2 Project Implementation Timeline (Gantt Chart of Activities linked to Logical Framework)
 - 3.3 Budget (with cost of Activities linked to Outputs for Budget Performance Integration)
4. Project Monitoring and Evaluation
 - 4.1 Indicators and Means of Verification *
 - 4.2 Baseline Data Collection Plan
5. Institutional and Management Framework
 - 5.1 Institutional Arrangements for Implementation
 - 5.2 Collaborating and Implementing Institutions (Partners) and Responsibilities
 - 5.3 Other Donor or International Organization Activity and Coordination
 - 5.4 Project Management Organizational Chart
6. Inputs
 - 6.1 Inputs provided by the DOL
 - 6.2 Inputs provided by the Grantee
 - 6.3 National and/or Other Contributions
7. Sustainability

Annex A: Full presentation of the Applicant's Logical Framework matrix (A worked example of a Logical Framework matrix and other background documentation for this SGA are available from the ILAB Web site at <http://www.dol.gov/ILAB/grants/education/SGA0301/bkgrdSGA0301.htm>.)

[FR Doc. 03-7482 Filed 3-27-03; 8:45 am]

BILLING CODE 4510-28-U

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Security Programs: Unemployment Insurance Program Letter Interpreting Federal Law

The Employment and Training Administration interprets federal law requirements pertaining to unemployment compensation (UC) and public employment services (ES). These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Workforce Agencies. The UIPL described below is

* Initial choice of and justification of indicators and means of verification can be refined and/or adapted after baseline collection and development of Monitoring and Evaluation Plan.

published in the **Federal Register** in order to inform the public.

UIPL 22-87, Change 2

UIPL 22-87, change 2, using a Q and A format, advises states of the Department of Labor's interpretation of federal law relating to the treatment of retirement pay for unemployment compensation (UC) purposes. Specific information regarding the effect of employee contributions to retirement plans and receipt of Social Security is also addressed.

Dated: March 20, 2003.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Employment and Training Administration Advisory System U.S. Department of Labor Washington, D.C. 20210

Classification—Retirement Pay
Correspondence Symbol—OWS/DL
DATE—February 3, 2003

Advisory: Unemployment Insurance
Program Letter No. 22-87 Change 2.

To: All State Workforce Agencies.

From: Cheryl Atkinson /s/ Administrator,
Office of Workforce Security.

Subject: Treatment of Retirement Pay—
Employee Contributions.

1. *Purpose.* To answer questions related to the treatment of retirement pay for unemployment compensation (UC) purposes, particularly regarding the effect of employee contributions to retirement plans.

2. *References.* The Internal Revenue Code of 1986 (IRC), including Section 3304(a)(15) of the Federal Unemployment Tax Act (FUTA); and Unemployment Insurance Program Letter (UIPL) No. 22-87 (52 *Fed. Reg.* 22,546 (1987)), and Change 1 (60 *Fed. Reg.* 55,604, 55,606 (1995)).

3. *Background.* Section 3304(a)(15), FUTA, requires, as a condition for employers in a state to receive credit against the federal unemployment tax, that the amount of UC payable to an individual be reduced for any week "which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual * * * ." Two subparagraphs go on to provide the following qualifications to this requirement:

- Under subparagraph (A), states must reduce UC due to receipt of retirement payments only when (i) a base period or chargeable employer maintained or contributed to the plan and (ii) the services performed for that employer affected eligibility for, or increased the amount of, the retirement payment. Subparagraph (A)(ii) does not apply to payments "made under the Social Security Act or the Railroad Retirement Act * * *."

Rescissions—None

Expiration Date—Continuing

- Under subparagraph (B), states may "take into account" contributions made "by the individual for the pension, retirement or retired pay, annuity, or other similar periodic

payment" to provide limits on any such reduction. This exception applies to all retirement plans to which the employee has made contributions.

The entire text of Section 3304(a)(15), FUTA, is provided in the Attachment. UIPL 22-87 provides the Department's interpretation of this Section. This Change 2 is issued to respond to questions from states, particularly those related to Subparagraph B.

4. Questions and Answers:

Question 1: How much latitude does a state have in "taking into account" an employee's contributions to set limits on the amount of any reduction in UC?

Answer: Since subparagraph (B) does not specify the degree of offset, states have broad latitude in how an employee's contributions are "taken into account." As a result, a state may disregard part or all of a retirement payment in determining the amount of UC payable "regardless of the relative proportions of employee and employer contributions." Therefore, a state may disregard up to 100 percent of a retirement payment as long as the employee contributed some amount to the retirement plan, and any reduction in the amount of UC payable need not be proportionate to the amount of the employee contribution.

If an employee at one time paid contributions to a plan that was later converted to one in which the employer paid 100% of the contributions, then the employee has made contributions to the plan. Therefore, the state has the option of "taking into account" the employee's contributions before the conversion.

Question 2: Must Social Security retirement benefits be deducted from UC?

Answer: No. As explained in the preceding Question and Answer, states may "take into account" contributions made "by an individual for the pension, retirement or retired pay, annuity, or other similar periodic payment." Since employees make contributions to Social Security, the state may "take into account" the employee's contributions to Social Security.

Confusion apparently exists concerning the treatment of Social Security payments because, as noted in the *Background* section, the qualification found in subparagraph (A)(ii) does not apply to Social Security. However, there is no similar limitation in the "take into account" provision in subparagraph (B).

Question 3: UIPL 22-87 says that, if a state chooses to exercise the "take into account" option, the state's UC law must clearly indicate that the retirement payments are not deducted from UC because of the employee's contribution. (Page 6 of UIPL 22-87.) If a state chooses to exercise the "take into account" option solely for Social Security payments, must the state's law explicitly state that it is "taking into account" the employee's contributions?

Answer: No. The Social Security contribution scheme is governed entirely by federal law, which by its terms provides for employee contributions to the Social Security trust fund based on the employee's work. Because it is clear from a reading of the relevant provisions of the federal law, that a state may exclude these payments from

pension offset, there is no need for the state law to explain how it is doing so.

There also is no need for the state law to explain that it is "taking into account" the employee's contribution with regard to other retirement plans with employee contributions that are governed entirely by federal law, such as Railroad Retirement or Civil Service retirement payments. For retirement plans that the state law singles out that are not governed entirely by federal law, the state's law must, to guarantee conformity with federal law, explicitly state that it is "taking into account" the employee's contribution.

Question 4: During a collective bargaining process, employees may give up pay raises or cost of living adjustments in return for an increased employer contribution to the pension plan. May states consider these employer payments to be "contributions made by the individual?"

Answer: No. The controlling factor is whether the individual actually made any direct contributions to the plan. A direct contribution is one made by payroll deduction or otherwise from an employee's personal funds. A wage agreement that results in increased employer contributions to a retirement plan in exchange for a surrender in wages does not constitute a direct contribution to the pension plan by the employees.

This is consistent with other provisions of federal law. The Department of Labor's Pension, Welfare and Benefits Administration (PWBA) considers contributions made by an employer to a pension fund in these cases to be employer contributions for purposes of laws administered by PWBA. (Indeed, the Form 5500, Annual Return/Report of Employment Benefit Plan, filed by the employer, should reflect this.) Also, payments made by an employer to a retirement plan are not considered part of an employee's wages for federal income tax purposes under Section 3401 *et seq.*, of the Internal Revenue Code (IRC). It would be inconsistent to attribute these contributions to employees for purposes of Section 3304(a)(15), FUTA (which is itself part of the IRC), when other provisions of the IRC do not consider them employee contributions.

Question 5: The federal legislative language is very complex. Could you give a simple statement of what retirement payments must cause a reduction in UC?

Answer: UC *must* be reduced only due to receipt of retirement pay that is—

- For a week of unemployment beginning during a period for which the individual is receiving retirement pay;
- Reasonably attributable to such week;
- Based on the previous work of the individual;
- 100% financed by a base period or chargeable employer; AND
- Based on work affecting eligibility for, or increasing the amount of, the retirement payment.

See UIPL 22-87, page 4, for a discussion of the various types of payments that fall under the term "retirement pay" and a more detailed discussion of these criteria.

5. *Action.* State administrators should distribute this advisory to appropriate staff.

6. *Inquiries.* Questions should be addressed to your Regional Office.

7. *Attachment.*¹

[FR Doc. 03-7450 Filed 3-27-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decision of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be

impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey

NJ020003 (Mar. 1, 2002)
NJ020005 (Mar. 1, 2002)
VT020008 (Mar. 1, 2002)
VT020009 (Mar. 1, 2002)

Volume II

Pennsylvania

PA020005 (Mar. 1, 2002)
PA020006 (Mar. 1, 2002)
PA0200026 (Mar. 1, 2002)

West Virginia

WV020001 (Mar. 1, 2002)

WV020002 (Mar. 1, 2002)

WV020003 (Mar. 1, 2002)

WV020010 (Mar. 1, 2002)

Volume III

None

Volume IV

Michigan

MI020001 (Mar. 1, 2002)
MI020002 (Mar. 1, 2002)
MI020003 (Mar. 1, 2002)
MI020004 (Mar. 1, 2002)
MI020005 (Mar. 1, 2002)
MI020007 (Mar. 1, 2002)
MI020008 (Mar. 1, 2002)
MI020010 (Mar. 1, 2002)
MI020011 (Mar. 1, 2002)
MI020012 (Mar. 1, 2002)
MI020013 (Mar. 1, 2002)
MI020015 (Mar. 1, 2002)
MI020016 (Mar. 1, 2002)
MI020017 (Mar. 1, 2002)
MI020019 (Mar. 1, 2002)
MI020020 (Mar. 1, 2002)
MI020027 (Mar. 1, 2002)
MI020030 (Mar. 1, 2002)
MI020031 (Mar. 1, 2002)
MI020034 (Mar. 1, 2002)
MI020035 (Mar. 1, 2002)
MI020036 (Mar. 1, 2002)
MI020050 (Mar. 1, 2002)
MI020052 (Mar. 1, 2002)
MI020060 (Mar. 1, 2002)
MI020062 (Mar. 1, 2002)
MI020063 (Mar. 1, 2002)
MI020064 (Mar. 1, 2002)
MI020065 (Mar. 1, 2002)
MI020066 (Mar. 1, 2002)
MI020067 (Mar. 1, 2002)
MI020068 (Mar. 1, 2002)
MI020069 (Mar. 1, 2002)
MI020070 (Mar. 1, 2002)
MI020071 (Mar. 1, 2002)
MI020072 (Mar. 1, 2002)
MI020073 (Mar. 1, 2002)
MI020074 (Mar. 1, 2002)
MI020075 (Mar. 1, 2002)
MI020076 (Mar. 1, 2002)
MI020077 (Mar. 1, 2002)
MI020078 (Mar. 1, 2002)
MI020079 (Mar. 1, 2002)
MI020080 (Mar. 1, 2002)
MI020081 (Mar. 1, 2002)
MI020082 (Mar. 1, 2002)
MI020083 (Mar. 1, 2002)
MI020084 (Mar. 1, 2002)
MI020085 (Mar. 1, 2002)
MI020086 (Mar. 1, 2002)
MI020087 (Mar. 1, 2002)
MI020088 (Mar. 1, 2002)
MI020089 (Mar. 1, 2002)
MI020090 (Mar. 1, 2002)
MI020091 (Mar. 1, 2002)
MI020092 (Mar. 1, 2002)
MI020093 (Mar. 1, 2002)
MI020094 (Mar. 1, 2002)
MI020095 (Mar. 1, 2002)
MI020096 (Mar. 1, 2002)
MI020097 (Mar. 1, 2002)
MI020099 (Mar. 1, 2002)
MI020100 (Mar. 1, 2002)
MI020101 (Mar. 1, 2002)
MI020105 (Mar. 1, 2002)

Volume V

Missouri

¹ ATTACHMENT I is available in the www.ows.doleta.gov Web site under Laws.

MO020001 (Mar. 1, 2002)
 MO020002 (Mar. 1, 2002)
 MO020003 (Mar. 1, 2002)
 MO020005 (Mar. 1, 2002)
 MO020006 (Mar. 1, 2002)
 MO020007 (Mar. 1, 2002)
 MO020009 (Mar. 1, 2002)
 MO020010 (Mar. 1, 2002)
 MO020011 (Mar. 1, 2002)
 MO020014 (Mar. 1, 2002)
 MO020015 (Mar. 1, 2002)
 MO020016 (Mar. 1, 2002)
 MO020019 (Mar. 1, 2002)
 MO020020 (Mar. 1, 2002)
 MO020041 (Mar. 1, 2002)
 MO020043 (Mar. 1, 2002)
 MO020044 (Mar. 1, 2002)
 MO020045 (Mar. 1, 2002)
 MO020047 (Mar. 1, 2002)
 MO020049 (Mar. 1, 2002)
 MO020050 (Mar. 1, 2002)
 MO020051 (Mar. 1, 2002)
 MO020052 (Mar. 1, 2002)
 MO020053 (Mar. 1, 2002)
 MO020056 (Mar. 1, 2002)
 MO020057 (Mar. 1, 2002)
 MO020059 (Mar. 1, 2002)
 MO020061 (Mar. 1, 2002)

Nebraska

NE020001 (Mar. 1, 2002)
 NE020003 (Mar. 1, 2002)
 NE020011 (Mar. 1, 2002)
 NE020019 (Mar. 1, 2002)

Volume VI

Alaska

AK020001 (Mar. 1, 2002)
 AK020005 (Mar. 1, 2002)

Idaho

ID020003 (Mar. 1, 2002)

Oregon

OR020001 (Mar. 1, 2002)
 OR020002 (Mar. 1, 2002)
 OR020004 (Mar. 1, 2002)
 OR020007 (Mar. 1, 2002)

Utah

UT020025 (Mar. 1, 2002)

Washington

WA020005 (Mar. 1, 2002)

Volume VII

Nevada

NV020003 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at <http://www.access.gpo.gov/davisbacon>. They are also available electronically by

subscription to the Davis-Bacon Online Service (<http://davisbacon.fedworld.gov>) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 20th day of March 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03-7084 Filed 3-27-03; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Snyder Coal Company

[Docket No. M-2003-011-C]

Snyder Coal Company, RD #2 Box 93, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.335 (Construction of seals) to its N. and L. Slope Mine (MSHA I.D. No. 36-02203) located in Northumberland County, Pennsylvania. The petitioner proposes to use wooden materials of moderate size and weight for constructing seals due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in

pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Snyder Coal Company

[Docket No. M-2003-012-C]

Snyder Coal Company, RD #2 Box 93, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1002-1 now 75.1002 (Installation of electric equipment and conductors; permissibility) to its N. and L. Slope Mine (MSHA I.D. No. 36-02203) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of non-permissible electric equipment within 150 feet of the pillar line in the working section's only intake entry (gangway) that is regularly traveled and examined. The petitioner states that the non-permissible equipment would include drags and battery locomotives due in part to the method of mining used in pitching anthracite mines and the alternative evaluation of the mine air quality for methane on an hourly basis during operation. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Cannelton Industries, Inc.

[Docket No. M-2003-013-C]

Cannelton Industries, Inc., PO Box 150, Cannelton, West Virginia 25036 has filed a petition to modify the application of 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility) to its Shadrick Mine (MSHA I.D. No. 46-08159) located in Kanawha County, West Virginia. The petitioner proposes to use 2,400-volt electricity to power continuous mining equipment at the Shadrick Mine. The petitioner has listed in this petition specific terms and conditions that would be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Lodestar Energy, Inc.

[Docket No. M-2003-014-C]

Lodestar Energy, Inc., PO Box 448, Clay, Kentucky 42404 has filed a petition to modify the application of 30 CFR 75.1101-1(b) (Deluge-type water spray systems) to its Baker Mine (MSHA I.D. No. 15-14492) located in Webster County, Kentucky. The petitioner requests a modification of the existing standard to allow weekly examinations

and testing of the deluge systems to ensure that nozzles are not blocked. In lieu of using blow-off dust covers, the petitioner proposes to have a trained person conduct a weekly visual examination and a functional test on each deluge-type fire suppression system installed at conveyor belt drives by actuating the water system and observing its performance. The petitioner states that any malfunction or clogged nozzle that is detected as a result of the weekly visual examination or functional test, would be corrected immediately. The petitioner will record the results of the examination and test in a book located on the surface and made available to the authorized representative of the Secretary. The book would be retained at the mine for one year. The petitioner further states that a book with the dates of the examinations and tests would also be kept at the location of each conveyor belt drive. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Mettiki Coal, LLC

[Docket No. M-2003-015-C]

Mettiki Coal, LLC, 293 Table Rock Road, Oakland, Maryland 21550 has filed a petition to modify the application of 30 CFR 75.1325(c)(1) (Firing procedures) to its Mettiki Mine (MSHA I.D. No. 18-00621) located in Garrett County, Maryland. The petitioner requests a modification of the existing standard to permit blasting in certain locations on the longwall face in the Mettiki Mine without always requiring all miners to leave the face to go to an area that is around at least one corner from the blasting area. The petitioner states that the modification would apply to blasting at longwall faces at locations more than 200 feet inby the headgate. The petitioner has listed in this petition specific terms and conditions that would be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Canyon Fuel Company, LLC

[Docket No. M-2003-016-C]

Canyon Fuel Company, LLC, HC 35 Box 380, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.500(d) (Permissible electric equipment) to its Skyline Mine No. 3 (MSHA I.D. No. 42-01566) located in Carbon County, Utah. The petitioner requests a modification of the existing standard to permit the use of low-

voltage or battery powered non-permissible electronic testing and diagnostic equipment in or inby the last open crosscut under controlled conditions. The petitioner proposes to use the following low-voltage or battery powered non-permissible electronic testing and diagnostic equipment: lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices, insulation testers (meggers), voltage, current and power measurement devices and recorders, pressure and flow measurement devices, signal analyzer device, ultrasonic thickness gauges, electronic component testers, and electronic tachometers, other testing and diagnostic equipment that may be approved by the MSHA District Office. The petitioner states that non-permissible electronic testing and diagnostic equipment shall only be used when equivalent permissible equipment does not exist. The petitioner further states that equipment used in or inby the last open crosscut shall be examined by a qualified person as defined in existing 30 CFR 75.153, prior to being used to ensure the equipment is being maintained in a safe operating condition. The examination results will be recorded in a book and made available to an authorized representative of the Secretary and the miners at the mine. The petitioner has listed specific procedures in this petition, including monitoring, that would be followed when using the non-permissible equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. L—Coal Co.

[Docket No. M-2003-017-C]

L—Coal Co., RD #2 Box 630, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1002-1 now 75.1002 (Installation of electric equipment and conductors; permissibility) to its Lenig Tunnel Mine (MSHA I.D. No. 36-08288) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of non-permissible electric equipment within 150 feet of the pillar line. The petitioner states that the non-permissible equipment would include drags and battery locomotives due in part to the method of mining used in pitching anthracite mines and the alternative evaluation of the mine air quality for methane on an hourly basis during operation. The petitioner asserts that the proposed alternative method would provide at least the same

measure of protection as the existing standard.

8. Maple Creek Mining, Inc.

[Docket No. M-2003-019-C]

Maple Creek Mining, Inc., 981 Route 917, Bentleyville, Pennsylvania 15314 has filed a petition to modify the application of 30 CFR 75.1400(e) (Hoisting equipment; general) to its High Quality Mine (MSHA I.D. No. 36-08375) located in Washington County, Pennsylvania. The petitioner proposes to use an electric slope hoist to transport miners in and out the mine. The petitioner states that the High Quality Mine is a new underground mine nearing completion of the slope facilities and hoist installation, and there are no miners employed at the mine. The petitioner further states that the High Quality Mine does not employ any miners who have held the position of hoisting engineer for a period of six months prior to opening the mine, and that an alternate method of obtaining qualifications for the position of a Hoisting Engineer is paramount to the operation of the High Quality Mine. The petitioner has listed specific terms and condition in this petition that would be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

9. Highland Mining Company

[Docket No. M-2003-020-C]

Highland Mining Company, has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements) to its Highland 9 Mine (MSHA I.D. No. 15-02709) located in Union County, Kentucky. The petitioner requests a modification of the existing standard to allow the mine to use the Getman diesel grader underground with rear wheel brakes only at the Highland 9 Mine. The petitioner proposes to: (i) Limit the diesel grader speed to 10 miles per hour maximum; (ii) physically block higher ear ratios on the Getman diesel grader in order to limit the speed to 10 miles per hour maximum; (iii) provide training to the grader operators on how to drop the grader blade in the event the brakes fail and the machine needs to be stopped. The petitioner states that the modification will provide the same protection that is realized from the current standard in that the grader can be stopped using the blade as a brake system. The petitioner asserts that the proposed alternative method would

provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to comments@msha.gov, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before April 28, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 21st day of March 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03-7395 Filed 3-27-03; 8:45 am]

BILLING CODE 4510-43-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences (BIO); 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 Biological Sciences (1110).

Date and Time: April 24, 2003; 8:30 a.m.—5 p.m. April 25, 2003, 8:30 a.m.—3 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 375.

Type of Meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Tel No.: (703) 292-8400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Planning and Issues Discussion:

- BIO Science Retreat.
- VIO Education Plan.
- NSB Task Force on Infrastructure Report.

Dated: March 25, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03-7512 Filed 3-27-03; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information cv unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 55, "Operators' Licenses".

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* As necessary for NRC to meet its responsibilities to determine the eligibility of applicants for operators' licenses, prepare or review initial operator licensing and requalification examinations, and review applications for and performance of simulation facilities.

5. *Who will be required or asked to report:* Holders of and applicants for facility (*i.e.*, nuclear power, research, and test reactor) operating licenses and individual operators' licenses.

6. *An estimate of the number of annual responses:* 278 (172 responses + 106 recordkeepers).

7. *The estimated number of annual respondents:* 106 (70 power reactor licensees + 36 non-power reactor licensees).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 66,018 (approximately 44,736 hours of reporting burden [averaging 422 hours per respondent] and approximately 21,282 hours of recordkeeping burden [averaging 201 hours per recordkeeper]).

9. *An indication of whether Section 3507(d), Public Law 104-13 applies:* N/A.

10. *Abstract:* 10 CFR Part 55, "Operators' Licenses," of the NRC's regulations, specifies information and data to be provided by applicants and

facility licenses so that the NRC may make determinations concerning the licensing and requalification of operators for nuclear reactors, as necessary to promote public health and safety. The reporting and recordkeeping requirements contained in 10 CFR Part 55 are mandatory for the licensees and applicants affected.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 28, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150-0018), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301-415-7233.

Dated at Rockville, Maryland, this 24th day of March, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03-7487 Filed 3-27-03; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-338, 50-339, 50-280, and 50-281]

Virginia Electric and Power Company, North Anna Power Station, Unit Nos. 1 and 2, and Surry Power Station, Unit Nos. 1 and 2; Notice of Issuance of Renewed Facility Operating License Nos. NPF-4, NPF-7, DPR-32, and DPR-37 for an Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Renewed Facility Operating License Nos. NPF-4, NPF-7, DPR-32, and DPR-37 to Virginia Electric and Power Company (the licensee), the operator of the North Anna Power Station, Unit Nos. 1 and 2

(North Anna, Units 1 and 2), and Surry Power Station, Unit Nos. 1 and 2 (Surry, Units 1 and 2). Renewed Facility Operating License No. NPF-4 authorizes operation of North Anna, Unit 1, by the licensee at reactor core power levels not in excess of 2893 megawatts thermal in accordance with the provisions of the North Anna, Unit 1, renewed license and its Technical Specifications. Renewed Facility Operating License No. NPF-7 authorizes operation of North Anna, Unit 2, by the licensee at reactor core power levels not in excess of 2893 megawatts thermal in accordance with the provisions of the North Anna, Unit 2, renewed license and its Technical Specifications. Renewed Facility Operating License No. DPR-32 authorizes operation of Surry, Unit 1, by the licensee at reactor core power levels not in excess of 2546 megawatts thermal in accordance with the provisions of the Surry, Unit 1, renewed license and its Technical Specifications. Renewed Facility Operating License No. DPR-37 authorizes operation of Surry, Unit 2, by the licensee at reactor core power levels not in excess of 2546 megawatts thermal in accordance with the provisions of the Surry, Unit 2, renewed license and its Technical Specifications.

North Anna, Units 1 and 2, are pressurized water nuclear reactors located in Louisa County, 40 miles northwest of the city of Richmond, Virginia. Surry, Units 1 and 2, are pressurized water nuclear reactors located in Surry County, 14 miles northwest of the city of Newport News, Virginia.

The applications for the renewed licenses complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter I, the Commission has made appropriate findings, which are set forth in each license. Prior public notice of the action involving the proposed issuance of these renewed licenses and of an opportunity for a hearing regarding the proposed issuance of these renewed licenses was published in the **Federal Register** on July 27, 2001 (66 FR 39213).

For further details with respect to this action, see (1) the Virginia Electric and Power Company's license renewal applications for North Anna, Units 1 and 2, and Surry, Units 1 and 2, dated May 29, 2001, as supplemented by letters dated November 30, 2001, January 4 (two letters), January 16, January 17, February 1 (two letters), February 5, May 22 (two letters), June 13, July 11, July 25, August 23, October

1, October 15, November 4, December 2, and December 11, 2002; (2) the Commission's safety evaluation report, dated November 5, 2002, and December 2002 (NUREG-1766); (3) the licensee's updated final safety analysis report; and (4) the Commission's final environmental impact statements (NUREG-1437, Supplement 6, for Surry, Units 1 and 2, and NUREG-1437, Supplement 7, for North Anna, Units 1 and 2), dated November 2002. These documents are available at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, first floor, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>.

Copies of Renewed Facility Operating License Nos. NPF-4, NPF-7, DPR-32, and DPR-37 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Director, Division of Regulatory Improvement Programs. Copies of the safety evaluation report (NUREG-1766), and the final environmental impact statements (NUREG-1437, Supplement 6, for Surry, Units 1 and 2, and NUREG-1437, Supplement 7, for North Anna, Units 1 and 2) may be purchased from the National Technical Information Service, Springfield, Virginia 22161-0002 (<http://www.ntis.gov>), 1-800-553-6847, or the Superintendent of Documents, U.S. Government Printing Office, PO Box 371954, Pittsburgh, PA 15250-7954 (http://www.access.gpo.gov/su_docs), 202-512-1800. All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 20th day of March 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03-7486 Filed 3-27-03; 8:45 am]

BILLING CODE 7590-01-U

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-05357]

Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Environmental Assessment and Finding of No Significant Impact related to license amendment of Byproduct Material License No. 29-08978-02, Novartis Pharmaceuticals Corporation, East Hanover, New Jersey.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Material License No. 29-08978-02 to authorize release of its facility in Summit, New Jersey, for unrestricted use and has prepared an Environmental Assessment in support of this action. Based upon the Environmental Assessment, the NRC has concluded that a Finding of No Significant Impact is appropriate, and, therefore, an Environmental Impact Statement is unnecessary.

FOR FURTHER INFORMATION CONTACT: Donna Janda, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (610) 337-5371 or e-mail DMJ@nrc.gov.

SUPPLEMENTARY INFORMATION: The U. S. Nuclear Regulatory Commission (NRC) is considering amending Byproduct Materials License No. 29-08978-02 and authorizing the release of the licensee's facility in Summit, New Jersey, for unrestricted use and has prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) in support of this action.

SUMMARY: The NRC reviewed the results of the decommissioning of the Novartis Pharmaceuticals Corporation (Novartis) facility in Summit, New Jersey. Novartis was formed in 1997 from the merger of Ciga-Geigy Corporation and Sandoz Corporation. From 1963 to 1997, Ciba-Geigy was authorized by NRC under Materials License No. 29-00459-03 to use radioactive materials for research and development purposes at the Summit facility. After the merger, Novartis continued to perform the same activities at the Summit facility under Materials License No. 29-00459-03 until 1998, when the license was terminated and the facility was added to Novartis' Materials License No. 29-08978-02. In January 2003, Novartis ceased operations with licensed materials at the Summit site, and in February 2003, requested that NRC release the facility for unrestricted use. Novartis has conducted surveys of the Summit facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20. The NRC staff has evaluated Novartis' request and results of the surveys, and

has developed an Environmental Assessment (EA) in accordance with the requirements of 10 CFR part 51. Based on the staff evaluation, the conclusion of the EA is a Finding of No Significant Impact (FONSI) on human health and the environment for the proposed licensing action.

Introduction

Novartis requested release for unrestricted use of the entire facility at 556 Morris Avenue, Summit, New Jersey, as authorized by the NRC License No. 29-08978-02. License No. 29-08978-02 was issued in 1968 and amended in March 1998 to include the Summit site. It authorizes Novartis to perform activities in Buildings 130, L, LX, and U at 556 Morris Avenue, Summit, New Jersey. NRC-licensed activities at the Summit site were limited to laboratory procedures typically performed on bench tops and in hoods. A variety of radionuclides were used primarily for research and development. No outdoor areas were affected by the use of licensed materials.

Licensed activities ceased completely in January 2003, and the licensee requested release of the facility for unrestricted use. Based on the licensee's historical knowledge of the site and the conditions of the facility, the licensee determined that only routine decontamination activities, in accordance with the licensee's radiation safety procedures, were required. A decommissioning plan was not required to be submitted to NRC. The licensee surveyed the facility, decontaminated or remediated areas as needed, and provided documentation that the facility meets the license termination criteria, specified in subpart E of 10 CFR part 20, and does not require additional decommissioning activities to be performed. NRC inspectors inspected the decommissioning activities at the Summit facility on November 26, 2002, December 19, 2002, January 10, 2003, and February 12, 2003. The inspectors observed surveys and wipe tests being performed and reviewed the licensee's records related to decommissioning and survey activities. The licensee subsequently requested that the Novartis facility in Summit, New Jersey be released for unrestricted use.

The Proposed Action

The proposed action is to amend Byproduct Materials License No. 29-08978-02 and release the facility at 556 Morris Avenue, Summit, New Jersey for unrestricted use. By letter dated February 6, 2003, Novartis provided survey results which demonstrate that the Summit site is in compliance with

the radiological criteria for license termination in subpart E, 10 CFR part 20, "Radiological Criteria for License Termination."

Purpose and Need for the Proposed Action

The purpose of the proposed action is to amend NRC Byproduct Materials License No. 29-08978-02 and release the Novartis site in Summit, New Jersey for unrestricted use. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for release of a facility for unrestricted use that ensures protection of public health and safety and the environment.

Alternative to the Proposed Action

Since the facility at the Summit site has already been surveyed and found acceptable for release for unrestricted use, the only alternative to the proposed action of amendment of the license and release of the Summit site for unrestricted use is no action. The no-action alternative would be to keep the facility on the license, which is not acceptable because the licensee does not plan to perform any activities with licensed materials at this location and does not plan to maintain staff to perform licensed activities. Maintaining the areas under a license would provide negligible, if any, environmental benefit and would reduce options for future use of the property.

The Affected Environment and Environmental Impacts

The NRC staff has reviewed the surveys performed by Novartis to demonstrate compliance with the 10 CFR 20.1402 license termination criteria. Based on its review, the staff has determined that the affected environment and environmental impacts associated with the release for unrestricted use of the Novartis Summit facility are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG-1496). The staff also finds that the proposed release for unrestricted use of the Novartis facility is in compliance with Title 10, Code of Federal Regulations, part 20.1402, "Radiological Criteria for Unrestricted Use." The NRC has found no other activities in the area that could result in cumulative impacts.

Agencies and Persons Consulted, and Sources Used

This EA was prepared entirely by the NRC staff. The State Office of Historical

Preservation, the State Fish and Wildlife Service, and the U.S. Fish and Wildlife Service were not contacted because release of the Novartis facility for unrestricted use does not affect historical or cultural resources, nor will it affect threatened or endangered species. No other sources were used beyond those referenced in this EA.

NRC provided a draft of its Environmental Assessment to the State of New Jersey Department of Environmental Protection (NJDEP) for review. On March 10, 2003, the NJDEP responded by letter and agreed with the conclusions of the EA.

Conclusion and Finding of No Significant Impact

Based on its review, the NRC staff has concluded that the completed action complies with 10 CFR part 20. NRC has prepared this EA in support of the proposed license amendment to release the facility at 556 Morris Avenue, Summit, New Jersey, for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

List of Preparers

Donna M. Janda, Health Physicist, Division of Nuclear Materials Safety, Region 1.

List of References

1. NRC License Nos. 29-08978-02 and 29-00459-03 inspection and licensing records.
2. Letter dated December 3, 2001, with attachment from Novartis Pharmaceuticals Corporation. [ADAMS Accession No. ML013550047]
3. Letter dated September 6, 2002, with attachment from Novartis Pharmaceuticals Corporation. [ADAMS Accession No. ML022660406]
4. Letter dated February 6, 2003, with attachment from Novartis Pharmaceuticals Corporation. [ADAMS Accession Nos. ML030510365, ML030510378, and ML030510379]
5. Title 10, Code of Federal Regulations, Part 20, Subpart E, "Radiological Criteria for License Termination."
6. Title 10, Code of Federal Regulations, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at <http://www.nrc.gov/reading-rm/ADAMS.html>. Any questions with respect to this action should be referred to Donna Janda,

Nuclear Materials Safety Branch 2,
Division of Nuclear Materials Safety,
Region 1, 475 Allendale Road, King of
Prussia, Pennsylvania 19406, telephone
(610) 337-5371, fax (610) 337-5269.

Dated at King of Prussia, Pennsylvania this
21st day of March, 2003.

For the Nuclear Regulatory Commission.

John D. Kinneman,

*Chief, Nuclear Materials Safety Branch 2,
Division of Nuclear Materials Safety, Region
I.*

[FR Doc. 03-7488 Filed 3-27-03; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available
From: Securities and Exchange
Commission, Office of Filings and
Information Services, Washington, DC
20549.

Extension:

Rule 12b-1—SEC File No. 270-188, OMB
Control No.-3235-0212.

Notice is hereby given that pursuant
to the Paperwork Reduction Act of 1995
[44 U.S.C. 3501], the Securities and
Exchange Commission ("Commission")
is soliciting public comments on the
collection of information under the
Investment Company Act of 1940 [15
U.S.C. 80a] (the "Act") summarized
below. The Commission plans to submit
this existing collection of information to
the Office of Management and Budget
("OMB") for extension and approval.

Rule 12b-1 [17 CFR 270.12b-1] under
Act the permits a registered open-end
investment company ("mutual fund") to
distribute its own shares and pay the
expenses of distribution out of the
mutual fund's assets provided, among
other things, that the mutual fund
adopts a written plan ("rule 12b-1
plan") and has in writing any
agreements relating to the
implementation of the rule 12b-1 plan.
The rule in part requires that (i) the
adoption or material amendment of a
rule 12b-1 plan be approved by the
mutual fund's directors and
shareholders; (ii) the board review
quarterly reports of amounts spent
under the rule 12b-1 plan; and (iii) the
board consider continuation of the rule
12b-1 plan at least annually. Rule 12b-
1 also requires funds relying on the rule
to preserve for six years, the first two
years in an easily accessible place,
copies of the rule 12b-1 plan, related
agreements and reports, as well as
minutes of board meetings that describe
the factors considered and the basis for

adopting or continuing a rule 12b-1
plan.

The board and shareholder approval
requirements of rule 12b-1 are designed
to ensure that fund shareholders and
directors receive adequate information
to evaluate and approve a rule 12b-1
plan. The requirement of quarterly
reporting to the board is designed to
ensure that the rule 12b-1 plan
continues to benefit the fund and its
shareholders. The recordkeeping
requirements of the rule are necessary to
enable Commission staff to oversee
compliance with the rule.

Based on information filed with the
Commission by funds, Commission staff
estimates that there are 6,217 mutual
fund portfolios with rule 12b-1 plans.
As discussed above, rule 12b-1 requires
the board of each fund with a rule 12b-
1 plan to (i) review quarterly reports of
amounts spent under the plan and (ii)
annually consider the plan's
continuation (which generally is
combined with the fourth quarterly
review). This results in a total number
of annual responses per fund of four and
an estimated total number of industry
responses of 24,868 (6,217 fund
portfolios \times 4 annual responses per fund
= 24,868 responses).

Based on conversations with fund
industry representatives, Commission
staff estimates that for each of the 6,217
mutual fund portfolios that currently
have a rule 12b-1 plan, the average
annual burden of complying with the
rule is 100 hours to maintain the plan.
This estimate takes into account the
time needed to prepare quarterly reports
to the board of directors, the board's
consideration of those reports, and the
board's annual consideration of the
plan's continuation. Commission staff
therefore estimates that the total burden
of the rule's paperwork requirements for
all funds is 621,700 hours (6,217 fund
portfolios \times 100 hours per fund =
621,700 hours).

The estimate of burden hours is made
solely for the purposes of the Paperwork
Reduction Act. The estimate is not
derived from a comprehensive or even
a representative survey or study of
Commission rules.

If a currently operating fund seeks to
(i) adopt a new rule 12b-1 plan or (ii)
materially increase the amount it spends
for distribution under its rule 12b-1
plan, rule 12b-1 requires that the fund
obtain shareholder approval. As a
consequence, the fund will incur the
cost of a proxy. Commission staff
estimates that three funds per year
prepare a proxy in connection with the
adoption or material amendment of a
rule 12b-1 plan. Commission staff
further estimates that the cost of each

fund's proxy is \$15,000. Thus the total
annualized cost burden of rule 12b-1 to
the fund industry is \$45,000 (3 funds
requiring a proxy \times \$15,000 per proxy).

The collections of information
required by rule 12b-1 are necessary to
obtain the benefits of the rule. Notices
to the Commission will not be kept
confidential. The Commission is seeking
OMB approval because an agency may
not conduct or sponsor, and a person is
not required to respond to, a collection
of information unless it displays a
currently valid control number.

Written comments are requested on:
(a) Whether the proposed collections of
information are necessary for the proper
performance of the functions of the
Commission, including whether the
information has practical utility; (b) the
accuracy of the Commission's estimate
of the burdens of the collection of
information; (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 respondents, including
through the use of automated collection
techniques or other forms of information
technology. Consideration will be given
to comments and suggestions submitted
in writing within 60 days of this
publication.

Please direct your written comments
to Kenneth A. Fogash, Acting Associate
Executive Director/CIO, Office of
Information Technology, Securities and
Exchange Commission, 450 5th Street,
NW., Washington, DC 20549.

Dated: March 20, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-7396 Filed 3-27-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to
the provisions of the Government in the
Sunshine Act, Pub. L. 94-409, that the
Securities and Exchange Commission
will hold the following meetings during
the week of March 31, 2003:

Open Meetings will be held on Tuesday,
April 1, 2003 at 10 a.m., in Room
1C30, the William O. Douglas Room,
and Wednesday, April 2, 2003 at 10
a.m., in Room 1C30, the William O.
Douglas Room. Closed Meetings will
be held on Tuesday, April 1, 2003 at
2:30 p.m., and Wednesday, April 2,
2003 at 11 a.m.

Commissioners, Counsel to the
Commissioners, the Secretary to the

Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Open Meeting scheduled for Tuesday, April 1, 2003 will be:

The Commission will consider whether to adopt new rules and amendments to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements established by the Sarbanes-Oxley Act of 2002. These requirements relate to: The independence of audit committee members; the audit committee's responsibility to select and oversee the issuer's independent accountant; procedures for handling complaints regarding the issuer's accounting practices; the authority of the audit committee to engage advisors; and funding for the independent auditor and any outside advisors engaged by the audit committee. The rule implements the requirements of Section 10A(m)(1) of the Securities Exchange Act of 1934, as added by Section 301 of the Sarbanes-Oxley Act of 2002.

The subject matter of the Closed Meeting scheduled for Tuesday, April 1, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature; Institution and settlement of injunctive actions; and Adjudicatory matters.

The subject matter of the Open Meeting scheduled for Wednesday, April 2, 2003 will be an oral argument:

The Commission will hear oral argument on an appeal by John J. Kenny and Nicholson/Kenny Capital Management, Inc., a registered investment adviser, from the decision of an administrative law judge. Kenny is a former associated person of a broker-

dealer and chairman and chief executive officer of Nicholson/Kenny.

The law judge found that Kenny engaged in schemes to defraud, in violation of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, and aided, abetted, and was a cause of violations of those provisions by another person. The law judge further found that Kenny and Nicholson/Kenny violated Section 206 of the Investment Advisers Act of 1940.

The law judge barred Kenny from association with any broker, dealer, or investment adviser; revoked Nicholson/Kenny's registration as an investment adviser; ordered respondents to cease and desist from committing or causing violations or future violations of the antifraud provisions; assessed civil penalties of \$700,000 against Kenny and \$500,000 against Nicholson/Kenny; and ordered respondents, jointly and severally, to pay disgorgement in the amount of \$1,333,000.

Among the issues likely to be argued are:

1. Whether respondents committed the alleged violations; and
2. If so, whether sanctions should be imposed in the public interest.

The subject matter of the Closed Meeting scheduled for Wednesday, April 2, 2003 will be: Post-argument Discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact: the Office of the Secretary at (202) 942-7070.

Dated: March 25, 2003.

Jonathan G. Katz,
Secretary.

[FR Doc. 03-7569 Filed 3-25-03; 4:31 pm]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47562; File No. SR-Amex-2003-14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the American Stock Exchange LLC Relating to a One-Year Pilot Program in Connection With Exchange Fees for Options Intermarket Linkage Orders

March 21, 2003.

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 February 28, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On March 7, 2003, Amex submitted Amendment No. 1 to the proposed rule change.³ On March 19, 2003, Amex submitted Amendment No. 2 to the proposed rule change.⁴ On March 21, 2003, Amex submitted Amendment No. 3 to the proposed rule change.⁵ 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 its Options Fee Schedule in order to clarify that market makers on other exchanges that send orders through the Linkage ("Linkage Orders") to the Amex for execution will be charged the same fees that the Exchange charges Exchange specialists and registered options traders ("ROTs") for the orders these entities execute on the Exchange. Because of the lack of experience in operating the Linkage, however, the Exchange proposes, along with the other options exchanges, a one-year pilot program in connection with the fees applicable to Linkage Orders.

The text of the proposed rule change is below. Proposed language is

Attorney, Division, Commission, dated March 18, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange made corrections to its fee schedule.

⁵ See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer Lewis, Attorney, Division, Commission, dated March 20, 2003 ("Amendment No. 3"). In Amendment No. 3, the Exchange marked its fee schedule to show the changes it had made in Amendment No. 2.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer Lewis, Attorney, Division of Market Regulation ("Division"), Commission, dated March 6, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified that market makers from other options exchanges sending Principal Acting as

Agent Orders through the options intermarket linkage ("Linkage") that are executed at the Exchange will pay the same fees that are paid for transactions executed on the Exchange by Exchange specialists and registered options traders. In addition, Amex amended the Options Fee Schedule to reflect that these linkage fees are pursuant to a one-year pilot program.

⁴ See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer Lewis,

italicized; deleted language is in brackets.

* * * * *

OPTIONS FEE SCHEDULE
[Options fees]

Type	Firm ⁽²⁾	Specialist, Market Maker (ROTs) ⁽⁶⁾	Broker/Dealer	Customer ⁽³⁾
I Options Transaction Fee ⁽¹⁾⁽⁶⁾ (per contract side)				
Equity Options	\$0.19	\$0.26	\$0.19	No Charge
Index Options	\$0.15	\$0.21	\$0.15	\$0.15
Options on S&P100 iShares	Same as Equity Options	Same as Equity Options	Same as Equity Options	\$0.15
II Options Comparison Fee ⁽¹⁾⁽⁶⁾ (per contract side)				
Equity Options	\$0.04	\$0.05	\$0.04	No Charge
Index Options	\$0.04	\$0.05	\$0.04	\$0.04
III Options Floor Brokerage Fee ⁽¹⁾⁽⁶⁾ (per contract side)				
Equity Options	\$0.03	\$0.05	\$0.03	No Charge
Index Options	\$0.03	\$0.05	\$0.03	\$0.03
IV Options Marketing Fee ⁽⁴⁾ (per contract side)				
Equity Options	No Charge	\$0.40	No Charge	No Charge
V Options Licensing Fee (per contract side)				
MNX, NDX and QQQ	No Charge	\$0.10	No Charge	No Charge
Type:				
OEF	No Charge	\$0.05	No Charge	No Charge
LQD	No Charge	\$0.10	No Charge	No Charge
ICF	No Charge	\$0.09	No Charge	No Charge
VI Options Order Cancellation Fee ⁽⁵⁾				
	\$1.00	\$1.00	\$1.00	\$1.00
VII Broker-Dealer Auto-Ex Fees (per contract side)				
Options Transaction Fee				
Equity Options	\$0.50	\$0.50	\$0.50	N/A
Index Options	\$0.50	\$0.50	\$0.50	N/A
Options on S&P100 iShares	\$0.50	\$0.50	\$0.50	N/A
Options Comparison Fee				
Equity Options	\$0.04	\$ [0.50] 0.05	\$0.04	N/A
Index Options	\$0.04	\$ [0.50] 0.05	\$0.04	N/A
Options Floor Brokerage Fee				
Equity Options	\$0.03	\$ [0.50] 0.05	\$0.03	N/A
Index Options	\$0.03	\$ [0.50] 0.05	\$0.03	N/A

Notes:

⁽¹⁾ The increase of \$0.09 in transaction fees, of \$0.01 in comparison fees, and of \$0.02 floor brokerage fees will not be imposed on contracts executed for the accounts of specialists, registered options traders, and non-member broker dealers as either an accommodation trade (also known as "Cabinet Trades") or part of the following strategies: (a) Reversals and conversions; (b) dividend spreads; and (c) box spreads. A Fee Reimbursement Form must be submitted to the Exchange in order to receive a reimbursement of the fee increases charged.

⁽²⁾ Customer facilitated orders will continue to be charged a transaction fee of \$0.07 per contract side.

⁽³⁾ Index Options machine delivered < 30 contracts are not assessed a transaction fee.

⁽⁴⁾ Excludes options trades between and among Registered Options Traders and Specialists. Effective August 1, 2001, this fee has been suspended.

⁽⁵⁾ The executing clearing member is charged \$1.00 for every order that it cancels through the Amex Order File in a given month when the total number of orders the executing clearing member canceled through AOF in that month exceeds the total number of orders that same Clearing Member executed through AOF in that same month. This fee will not apply to executing Clearing Members that cancel fewer than 500 orders through AOF in a given month.

⁽⁶⁾ Pursuant to a one-year pilot program, the fees applicable to specialists, market maker (ROTs) [I] include members of other options exchanges executing Linkage transactions except for Satisfaction Orders.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex 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. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex proposes to adopt fees applicable to certain Linkage Orders executed on the Exchange. The Plan for

the Purpose of Creating and Operating an Intermarket Options Market Linkage ("Linkage Plan" or "Plan") was originally approved by the Commission on July 28, 2000,⁶ and subsequently amended on June 27, 2001,⁷ May 30, 2002,⁸ January 29, 2003,⁹ and January 31, 2003.¹⁰ For the purpose of implementing the Linkage Plan, Amex filed and received Commission approval of the Exchange's rules governing the operation of the Intermarket Linkage ("Linkage") on January 31, 2003.¹¹ The Exchange, with the other options exchanges, launched Phase I of the Linkage on January 31, 2003.

In connection with the launch of the Linkage, the Exchange seeks to clarify that the existing fee amount of \$0.36 per contract side¹² for equity options that currently is charged to Exchange specialists and registered options traders ("ROTS") will also apply to executions resulting from Linkage Orders. As a result, market makers from other exchanges sending Principal Acting as Agent Orders ("P/A Orders") or Principal Orders ("P Orders") will pay the same execution fees applicable to Exchange specialists and ROTS. The Exchange believes it is appropriate to charge market makers on other option exchanges the same fees members pay for proprietary transactions when such market makers access the liquidity available on the Amex.

As set forth in Amendment No. 4 of the Plan recently approved by the Commission, fees will not be charged to a member of another options exchange that is seeking to satisfy customer orders

⁶ See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). On October 19, 1999, the Commission issued an order under section 11A(a)(3)(B) of the Act, directing the options exchanges to file a national market systems plan within 90 days to link the options markets. See Securities Exchange Act Release No. 42029 (October 19, 1999), 64 FR 57674 (October 26, 1999). The options exchanges that are participants to the Plan include Amex, Chicago Board Options Exchange, Inc., Pacific Exchange, Inc., Philadelphia Stock Exchange, Inc. and the International Securities Exchange, Inc. ("options exchanges").

⁷ See Securities Exchange Act Release No. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001).

⁸ See Securities Exchange Act Release No. 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002).

⁹ See Securities Exchange Act Release No. 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003) ("Amendment No. 4").

¹⁰ See Securities Exchange Act Release No. 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003).

¹¹ See Securities Exchange Act Release No. 47297 (January 31, 2003), 68 FR 6526 (February 7, 2003).

¹² The fee amount of \$0.36 per contract side consists of a \$0.26 options transaction fee, a \$0.05 options comparison fee, and a \$0.05 options floor brokerage fee.

(i.e., Satisfaction Orders) on its book that were traded through.¹³

Due to the lack of experience that the options exchanges have in operating the Linkage, the Exchange has proposed that a one-year pilot program be instituted with respect to the application of Linkage Order fees. In this manner, the Amex, as well as the other options exchanges, will be able to monitor the operation of the Linkage during its first year of operation and reassess whether the proposed fees are adequate and reasonable.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act¹⁴ regarding the equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 amended proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the

¹³ A trade-through occurs when a broker-dealer executes an order on one exchange at a price inferior to another exchange's disseminated price.

¹⁴ 15 U.S.C. 78f(b)(4).

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 Amex. All submissions should refer to File No. SR-Amex-2003-14 and should be submitted by April 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-7401 Filed 3-27-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47559; File No. SR-CBOE-2003-10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Suspend on a Pilot Basis an Access Fee for Non-Customer Orders in Equity Options Classes Executed Through the Retail Automatic Execution System

March 21, 2003.

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 March 10, 2003, 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.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a pilot program to suspend an Access Fee for non-customer orders in equity option classes executed through its Retail Automatic Execution System ("RAES"). The text of the proposed rule change appears below.³ New text is in italics.

Fee Schedule

March 11, 2003

4. RAES (Retail Automatic Execution System) (1)(4): Per Contract

* * * * *

Non-Customer Transactions (origin code other than "C")(8)—\$.30 (*Fee suspended through 6/30/03 in equity option classes only*).

* * * * *

(1) Per contract side, including FLEX options. Transaction and Trade Match Fees are applicable to the CBOEdirect system.

* * * * *

(4) Transaction, trade match and RAES fees are charged to the CBOE executing firm on the input record.

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 CBOE previously established a \$.30 per contract Access Fee to all non-customer transactions (defined as all transactions with origin codes other than "C")⁴ in option classes that are

³ The text reflects minor, technical corrections to the text that the Exchange submitted with the proposed rule. Telephone conversation between Christopher Hill, Attorney, CBOE, and T.R. Lazo, Senior Special Counsel, Division of Market Regulation, Commission, on March 20, 2003.

⁴ Every order entering the CBOE Order Routing System is assigned an origin code to reflect the category (though not the specific identity) of the source of each order: "C" for public customers, "B" for Broker-Dealers, "F" for proprietary accounts of

executed by means of the CBOE's RAES.⁵

The CBOE now proposes a pilot program to suspend this Access Fee in all equity option classes, in conjunction with other steps the CBOE is taking to open up equity option classes to more automatic execution of non-customer orders.⁶ The CBOE believes that suspending the Access Fee will encourage more non-customer RAES orders to be sent to the CBOE. The suspension will last through the end of the CBOE's fiscal year on June 30, 2003. Prior to that date, the CBOE will examine the effects of suspending the fee and advise the Commission whether CBOE intends to continue or modify the suspension.

(2) Statutory Basis

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act,⁷ in general, and furthers the objectives of section 6(b)(4) of the Act,⁸ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

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 not necessary or appropriate in furtherance of the purposes of the Act.

member firms of the Options Clearing Corporation, "M" for CBOE market-makers, "N" for non-CBOE market-makers, and "Y" for specialists in an underlying security. The CBOE adopted a related order identification rule for market maker and specialist orders. See Securities Exchange Release Act No. 34-46102 (June 21, 2002), 67 FR 43692 (June 28, 2002) (Notice of Filing and Immediate Effectiveness of SR-CBOE-2002-33).

⁵ See Securities Exchange Act Release Nos. 46455 (September 3, 2002), 67 FR 57468 (September 10, 2002) (Notice of Filing and Immediate Effectiveness of SR-CBOE-2002-42, which established the \$.30 per contract Access Fee for non-customer RAES orders in options on the Nasdaq 100® Index Tracking Stock ("QQQ"), Nasdaq-100® Index Options (NDX), CBOE Mini-NDX Index Options ("MNX SM"), and European style S&P 100® Index options ("XEO") classes; and 47032 (December 18, 2002), 67 FR 79196 (December 27, 2002) (Notice of Filing and Immediate Effectiveness of SR-CBOE-2002-68, which extended the \$.30 per contract access fee to non-customer RAES transactions in equity options, as well as other option classes when non-customer orders in those classes become eligible for execution via RAES.)

⁶ See, e.g., Securities Exchange Act Release No. 47492 (March 13, 2003), 68 FR 13350 (March 19, 2003) (Notice of Filing and Immediate Effectiveness of SR-CBOE-2003-09 which proposed to expand the order-types eligible for the Exchange's Large Order Utility).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act⁹ and Rule 19b-4(f)(2) hereunder.¹⁰ At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose 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 Exchange. All submissions should refer to File No. SR-CBOE-2003-10 and should be submitted by April 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-7398 Filed 3-27-03; 8:45 am]

BILLING CODE 8010-01-P

⁹ 15 U.S.C. 78(s)(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47553; File No. SR-CBOE-2003-05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Clearing Firm Prohibitions From Accepting Certain Third Party Deposits

March 21, 2003.

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 February 10, 2003, 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 CBOE. The CBOE filed Amendment No. 1 to the proposal on March 5, 2003. 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 CBOE proposes to add a rule to Chapter 4 of its rules (“Business Conduct”) that would prohibit market-maker clearing firms from accepting certain deposits by third parties. The text of the proposed rule change follows:

Additions are *italicized*; deletions are in [brackets].

Chicago Board Options Exchange, Incorporated

Rules

Chapter IV

Business Conduct

Rule 4.1 through 4.20.—no change.

Third Party Deposits Prohibited

Rule 4.21. Member organizations engaged in the business of clearing and carrying the accounts of options market-makers (“Clearing Firms”) registered to conduct business on the Exchange are subject to the following prohibitions:

(1) The acceptance of a check or funds transfer for deposit into any broker-dealer account cleared or carried by a Clearing Firm is prohibited if the name on the account from which the check or transfer is drawn is not the

same as that on the account cleared or carried by the Clearing Firm.

(2) The acceptance of securities, either directly or via transfer, for deposit into any broker-dealer account cleared or carried by a Clearing Firm is prohibited if the name on the securities, or the name on the account from which the securities are drawn, is not the same as that on the account cleared or carried by the Clearing Firm.

** * * Interpretations and Policies:*

.01 The foregoing prohibitions do not apply to checks, funds or securities for deposit to a market-maker’s account that are drawn on a joint account of which the market-maker is one of the joint owners, and the title of the market-maker’s account with the Clearing Firm coincides with the market-maker’s designation on the joint account.

.02 The foregoing prohibitions do not apply to checks, funds or securities for deposit into the account of a U.S. broker-dealer business entity if the depositor (i) has an ownership interest disclosed on Schedule A of the broker-dealer’s Uniform Application for Broker-Dealer Registration (“Form BD”), or (ii) is a U.S. broker-dealer and has an ownership interest disclosed on Schedule B of Form BD.

.03 If immediate action is required in order for an account of a broker-dealer cleared and carried by a Clearing Firm to (i) establish a positive net liquidating equity or supplement equity when required based upon internal risk control procedures of the Clearing Firm, or (ii) achieve compliance with SEC Rule 15c3-1 (the Net Capital Rule), an officer or partner of a Clearing Firm may grant an exception, which must be in writing, with respect to any transaction prohibited by this Rule 4.21.

.04 Transfers of funds or securities between two accounts cleared and carried by the same Clearing Firm are permitted provided that, if both accounts are not owned by the same person(s) or entity, the transfer must be authorized in writing by the owner of the account from which funds and/or securities would be withdrawn.

.05 Documentation evidencing any exceptions granted pursuant to Interpretation and Policy .03 above, as well as documents authorizing transfers of funds or securities between two accounts pursuant to Interpretation and Policy .04 above, shall be retained by the Clearing Firm for at least three years, the first two years in an easily accessible place for examination by the Exchange. In lieu of having the documents easily accessible, a Clearing Firm may make and keep current a separate central log, index or other file

through which the documents can be identified and retrieved.

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 CBOE 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 CBOE 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 CBOE proposes to adopt a rule that prohibits a member organization that is engaged in the business of clearing and carrying the accounts of options market-makers (a “Clearing Firm”)³ from accepting for deposit into an account cleared or carried by the Clearing Firm a check or funds transfer drawn on the account of a third party. Under the proposed rule, Clearing Firms would be prohibited (with certain exceptions) from accepting a check or funds transfer if the name on the account from which the funds are drawn is different (*i.e.*, a “third party”) from the name on the account cleared or carried by the Clearing Firm. In addition to checks or funds transfers from third parties, the proposed rule would also prohibit (with certain exceptions) Clearing Firms from accepting deposits or transfers of securities in the name of third parties. This rule filing has been undertaken as a result of a recommendation by the CBOE’s Financial Regulatory Committee.⁴

The proposed rule would not prohibit a Clearing Firm from transferring funds and/or securities between different name accounts that it carries, although the proposed rule would reaffirm that

³ The proposed rule is intended to apply only to Clearing Firms as defined above. Broker-dealers that conduct a public customer business have policies and procedures that either prohibit acceptance of third party checks or require extensive due diligence.

⁴ The CBOE’s Financial Regulatory Committee is primarily comprised of representatives of market-maker clearing member organizations of the CBOE. The CBOE consults this committee primarily on issues of clearing operations, margin requirements, net capital requirements, and books and records requirements. The committee provides advice, opinions, and recommendations to the CBOE on rules, interpretations, and procedures.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

appropriate written authorization is required for such transfers. The discussion herein focuses on the proposal to prohibit third party checks, but applies equally to funds transfers, as well as deposits and transfers of securities.

Currently, there is no prohibition in the CBOE rules or any of the securities regulations on accepting third party checks for deposit into a securities account. A majority of the CBOE's Clearing Firms will accept the check of a third party for deposit to a market-maker account, unless it would be clearly inappropriate. This is done as a convenience to market-maker customers. These checks are made payable either to the market-maker or the Clearing Firm. Before accepting such deposits, the Clearing Firm examines the relationship of the depositor to the market-maker or market-making entity to gain assurance that there is a legitimate reason for the deposit, such as the third party having an ownership interest in the market-maker's business (e.g., a member of the Limited Liability Corporation ("LLC") in the case of a market-making entity organized as an LLC).

However, by accepting third party checks, the Clearing Firm takes a business risk. While Clearing Firms make a reasonable effort to confirm that funds deposited via a third party's check are the property of the market-maker or market-making entity, and the transaction exhibits no obvious improprieties, repercussions can arise later. Some Clearing Firms have, in fact, been named as defendants in legal actions taken by third parties who allege some type of impropriety with respect to funds deposited at the Clearing Firm via their check, and seek a monetary judgment against the firm.⁵ These actions are rare, and the allegations raised against the Clearing Firm are usually without merit and ultimately dismissed. However, the legal expenses of defending an arbitration claim or lawsuit are alone a significant financial risk to Clearing Firms.

The practice of Clearing Firms accepting third party checks most likely grew as a service among Clearing Firms. Clearing Firms believe that accepting third party checks has become uneconomical when the business risks are considered, and thus believe the practice should be ended. They argue that their market-maker customers should maintain a bank checking account for their market-making

business. Clearing Firms believe that the best business practice in this regard is for Clearing Firms to accept checks from a market-maker's bank checking account, which would allow the Clearing Firm greater control over risks with only minor inconvenience to a market-maker. Market-makers could simply use their bank checking account for making deposits of third-party checks and issue checks or effect transfers to the Clearing Firm from their bank checking account. In this way, Clearing Firms need not provide banking services to their customers that could expose them to litigation risks because they are broker-dealers. The proposed rule would, in effect, allow a Clearing Firm to accept a check, funds transfer or securities transfer only if it is drawn on an account that is in the same person's or business entity's name as the account of deposit at the Clearing Firm.

Interpretations and Policies ("I&P") to the proposed rule would allow certain exceptions to the prohibitions set forth in the rule. Under proposed I&P .01, checks, funds or securities drawn on a joint account of which the market-maker is one of the joint owners are generally excepted from the prohibition. Under proposed I&P .02, if a market-maker whose account is cleared or carried by a Clearing Firm is not a sole proprietor (individual), but is structured as a partnership or corporation, the check of a third party listed as an owner on Schedule A or Schedule B of the market-making entity's Form BD may be accepted by the Clearing Firm for deposit. In order to qualify for this exception, an owner listed on Schedule B of Form BD must be a U.S. broker-dealer. Under proposed I&P .03, if a market-maker is subject to the Commission's Net Capital Rule, an officer or partner of the Clearing Firm may make a written exception to the prohibition if the market-maker's net capital falls below the applicable minimum. In addition, an officer or partner of a Clearing Firm may make a written exception if the equity in the market-maker's account is not sufficient based on the Clearing Firm's internal risk control analysis, or if net liquidating equity becomes negative.

Under proposed I&P .04, transfers of funds and/or securities between different name accounts that are cleared and carried by the same Clearing Firm are permitted if the Clearing Firm obtains written authorization for the transfer from the owner of the account from which the funds and/or securities would be withdrawn. Lastly, proposed I&P .05 sets forth retention requirements for the Clearing Firm documentation

evidencing exceptions and authorizations to transfer funds and securities between accounts.

The CBOE believes that the uncertainty surrounding third party deposits justifies prohibition by rule. The CBOE further believes that while each Clearing Firm could make a business decision to refuse to accept third party checks, funds transfers and securities, a rule is needed to establish a uniform, safe practice.

2. Statutory Basis

The proposed rule is intended to eliminate an unnecessary practice and promote a greater level of financial safety and soundness across Clearing Firms. As such, the CBOE believes that the proposed rule change is consistent with and furthers the objectives of section 6(b)(5) of the Act,⁶ in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the CBOE 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,

⁵ In the case of a business relationship between a third party and a market-maker, a claim may arise due to trading losses.

⁶ 15 U.S.C. 78(f)(b)(5).

including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-2003-05 and should be submitted by April 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-7399 Filed 3-27-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47564; File No. SR-ISE-2003-13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Fee Changes

March 24, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on March 13, 2003, the International Securities Exchange, Inc. ("Exchange" or "ISE") 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. 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 Exchange is proposing to add to the list of options on Select Sector SPDR Funds and exchange traded funds ("ETFs") based on indexes developed by the Frank Russell Company ("Russell") that will be subject to the \$.10 surcharge for non-public customer transactions on the Exchange's Schedule of Fees. The text of the proposed rule change is available from the Office of the Secretary of the ISE or 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 Exchange has entered into a license agreement to use various indexes and trademarks of Russell in connection with the listing and trading of options on certain ETFs based on Russell indexes. The Exchange has entered into a license agreement to use various indexes and trademarks of Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("S&P"), in connection with the listing and trading of options on certain Select Sector SPDR Funds. The purpose of this proposed rule change is to add to the list of options on Select Sector SPDR Funds and ETFs based on indexes developed by Russell that will be subject to the \$.10 surcharge fee for non-public customer transactions on the Exchange's Schedule of Fees. The Exchange's Schedule of Fees currently lists seven (7) Select Sector SPDR Funds and ten (10) exchange-traded funds based on indexes developed by Russell that are subject to the surcharge.³ The

³ See Securities Exchange Act Release Nos. 47075 (December 20, 2002), 67 FR 79673 (December 30, 2002) (SR-ISE-2002-29); 47243 (January 24, 2003), 68 FR 5066 (January 31, 2003) (SR-ISE-2003-01); and 47536 (March 19, 2003) (SR-ISE-2003-12).

Exchange is proposing to add options on two (2) more Select Sector SPDR Funds and two (2) more exchange-traded funds based on indexes developed by Russell that will be subject to the surcharge.⁴ These additional options are listed in the Schedule of Fees. The purpose of the fee for trading in these options is to defray the licensing costs.

The Exchange believes that charging the participants that trade in options on these instruments is the most equitable means of recovering the costs of the license. However, because competitive pressures in the industry have resulted in the waiver of all transaction fees for customers, we propose to exclude Public Customer Orders (as defined in Exchange Rule 100) from this additional fee. This additional fee will only be charged with respect to Non-Public Customer Orders.⁵

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(4) of the Act that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.⁶

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

⁴ Pursuant to this proposed rule change, the proposed fee will apply to options on the Energy Select Sector SPDR Fund, Consumer Staples Select Sector SPDR Fund, Russell 1000 Index Fund iShares and Russell 3000 Index Fund iShares.

⁵ Under Exchange Rule 100, a "Public Customer" is a person that is not a broker or dealer in securities, and a "Public Customer Order" is an order for the account of a Public Customer. Accordingly the execution of orders for the account of a "non-broker-dealer" will not be subject to the proposed \$.10 surcharge fee. All other orders, *i.e.*, orders for the account of a broker-dealer, will be subject to the proposed \$.10 surcharge fee. Telephone call between Joseph Ferraro, Assistant General Counsel, ISE, and Jennifer Colihan, Special Counsel, Division of Market Regulation ("Division"), Commission, March 19, 2003.

⁶ 15 U.S.C. 78f(b)(4).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee or other charge imposed by the Exchange, has become effective pursuant to section 19(b)(3) of the Act⁷ and rule 19b-4(f)(2)⁸ thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-ISE-2003-13 and should be submitted by April 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-7397 Filed 3-27-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47560; File No. SR-PCX-2003-08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

March 21, 2003.

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 March 11, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 21, 2003, PCX submitted 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

PCX proposes to amend its Schedule of Fees and Charges For Exchange Services in order to state that executions resulting from orders routed to the Exchange through the options intermarket linkage ("Linkage Orders"), other than satisfaction orders, will be subject to the same billing treatment as other fees related to broker-dealer executions. The Exchange intends to implement this fee on a one-year pilot basis retroactive to January 31, 2003. The text of the proposed fee schedule is below. Proposed language is italicized; deleted language is in brackets.

* * * * *

SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES

PCX Options: Trade-Related Charges	
Transactions:	
Customer	\$0.00 per contract side
[PCX] Market Maker	\$0.21 per contract side
Firm	\$0.10 per contract side for customer facilitation
Broker/Dealer	\$0.21 per contract side
Ticket Data Entry	\$0.25 per firm trade
	\$0.50 per market maker trade
On-Line Comparison	\$0.05 per contract for firm, broker/dealer, and market maker executions
	No on-line comparison charge is assessed on customer executions.
Broker Dealer Auto-Ex Surcharge	\$0.20 per contract
Linkage Fees ¹	<i>\$0.21 per transaction per contract side</i>
	<i>\$0.05 comparison fee</i>
Order Cancellation	\$1.00 per MFI order canceled [1] ²
	Only applies to orders cancelled through the MFI in any month where the total number of orders cancelled through the MFI exceeds the total number of orders that same firm executed through the MFI in that same month.
Volume Discount Program	
449,000 or lower	No reduction
450,000 to 474,999	\$0.01
475,000 to 499,999	\$0.02
500,000 to 524,999	\$0.03
525,000 or higher	\$0.04
Marketing Charge	Rates Variable—See separate schedule
Cap on Marketing Charge	\$200 per trade

¹ Executions resulting from Linkage Orders, other than satisfaction orders, will be subject to this fee. This fee is applicable through an Exchange Pilot Program and will expire on January 31, 2004.

[1]² Only applies to orders cancelled through the MFI in any month where the total number of orders cancelled through the MFI exceeds the total number of orders that same firm executed through the MFI in that same month.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 19b-4(f)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 217 CFR 240.19b-4.

³ See letter from Mai Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated March 18, 2003 ("Amendment No. 1"). In Amendment No. 1, PCX added a statement to footnote number one of its Schedule

of Fees and Charges for Exchange Services limiting the revised linkage fees to a one-year pilot program ending January 31, 2004; and to change the name of the transaction fee from "PCX Market Maker" to "Market Maker."

* * * * *

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. PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an options intermarket linkage ("Linkage Plan" or "Plan")⁴ which linkage now includes participation by the five option exchanges ("Participant Exchanges")⁵ The Exchange proposed to adopt new rules relating to the operation of the options intermarket linkage on September 26, 2002 and filed an amendment to the proposal on January 30, 2003. The Commission approved the PCX's proposed rules on January 31, 2003.⁶ Along with all of the Participant Exchanges, the Exchange launched Phase I of the options intermarket linkage on January 31, 2003.

In connection with the launch of the options intermarket linkage, the Exchange seeks to include in its Schedule of Fees and Charges For Exchange Services a provision that applies to linkage fees stating that executions resulting from Linkage Orders will be subject to the same billing treatment as other broker-dealer executions. Accordingly, with respect to either a Principal Acting as Agent ("P/A") Linkage Order or a Principal Linkage Order that is routed to the Exchange from other market centers, existing transaction fees and on-line comparison fees will apply equally to such Linkage Orders. This proposal specifies that existing PCX fees will not apply to Satisfaction Orders (which

result after a trade-through⁷). The Exchange proposes these linkage fees as a pilot that will be effective for one year from January 31, 2003 until January 31, 2004.

The Exchange also seeks to make a conforming change to its Schedule of Fees and Charges in order to change the name of the transaction fee from "PCX Market Maker" to "Market Maker." The Exchange represents that it previously sought to make a distinction between PCX Market Maker fees and non-PCX Market Maker fees. After further consideration, the Exchange chose to abandon any distinction and removed the non-PCX Market Maker item from its proposal. In doing so, it did not eliminate the term "PCX" from the Market Maker transaction fees as it should have and seeks to do so here.

The Exchange does not seek to make any other changes to its Schedule of Fees and Charges.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,⁸ in general, and section 6(b)(4),⁹ in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other persons using its facilities for the purpose of executing P/A Linkage Orders or Principal Linkage Orders that are routed to the Exchange from other market centers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange requests that the Commission allow the Exchange to apply the rate retroactively as of January 31, 2003, the effective date of permanent linkage.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2003-08 and should be submitted by April 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-7400 Filed 3-27-03; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3481, Amdt. 1]

State of Ohio

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective March 18, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on February 14,

⁴ See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

⁵ See Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000).

⁶ See Securities Exchange Act Release No. 47295, 68 FR 6242 (February 6, 2003).

⁷ Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 17 CFR 200.30-3(a)(12).

2003 and continuing through March 18, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is May 13, 2003, and for economic injury the deadline is December 15, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 21, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03-7461 Filed 3-27-03; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P007]

State of Tennessee

As a result of the President's major disaster declaration for Public Assistance on March 20, 2003 the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Anderson, Bledsoe, Campbell, Cannon, Carter, Claiborne, Cumberland, Decatur, Fentress, Grainger, Hancock, Houston, Humphreys, Jackson, Johnson, Lewis, Loudon, Marion, Meigs, Rhea, Roane, Scott, Sequatchie, Stewart, Union and Van Buren Counties in the State of Tennessee constitute a disaster area due to damages caused by severe storms and flooding occurring from February 14, 2003 and continuing through February 26, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 19, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations Without Credit Available Elsewhere	3.189
Non-Profit Organizations With Credit Available Elsewhere	5.500

The number assigned to this disaster for physical damage is P00711.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: March 21, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03-7460 Filed 3-27-03; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice 4323]

Culturally Significant Objects Imported for Exhibition Determinations: "Whistler, Women and Fashion"

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 "Whistler, Women and Fashion," 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 the exhibit objects at the Frick Collection, from on or about April 22, 2003 until on or about July 13, 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**. Additionally, notice is hereby given that two objects for which Determinations were previously made, and published in the **Federal Register** on September 24, 2002, are included in this exhibition.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Orde F. Kittrie, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/401-4779). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: March 24, 2003.

Patricia Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03-7490 Filed 3-27-03; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Four Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on four currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before May 27, 2003.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF-100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267-9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. *2120-0045:* Bird/Other Wildlife Strike. Wildlife strike data are collected to develop standards and monitor hazards to aviation. Data identify wildlife strike control requirements and provide in-service data on aircraft component failure. The respondents would include the pilot-in-command of an aircraft involved in an aircraft-wildlife collision, ATCT personnel, or other airport or airline personnel who have knowledge of the incident. The current estimated annual reporting burden is 400 hours.

2. *2120-0557:* Passenger Facility Charge (PFC) Application. 49 U.S.C. 40117 authorizes airports to impose passenger facility charges. This program requires public agencies and certain members of the aviation industry to

prepare and submit applications and reports to the FAA. This program provides additional funding for airport development which is needed now and in the future. The current estimated annual reporting burden is 26,292 hours.

3. *2120-0614*: Revised Standards for Cargo or Baggage Compartments in Transport category Airplanes. The information collection from part 121 carriers is necessary to ensure the operator's compliance to the upgrade of the fire safety standards for cargo or baggage compartments in certain transport category airplanes by eliminating Class D compartments. The current estimated annual reporting burden is 720 hours.

4. *2120-0616*: revisions to Digital Flight Data Recorders. This rule requires that certain airplanes be equipped to accommodate additional digital flight data recorder parameters. The revisions require additional information to be collected to enable more thorough accident or incident investigations and to enable the industry to predict certain trends and make necessary modifications before an accident or incident happens. This is a passive information collection activity, and the assigned hourly burden is 1 hour.

Issued in Washington, DC, on March 18, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, APF-100.

[FR Doc. 03-7380 Filed 3-27-03; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172: Future Air-Ground Communications in the Very High Frequency (VHF) Aeronautical Data Band (118-137 MHz)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 172 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 172: Future Air-Ground Communications in the VHF Aeronautical Data Band (118-137 MHz).

DATES: The meeting will be held April 8-10, 2003 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, SW.,

Washington, DC 20036; telephone (202) 833-9339; fax (202) 833-9434; Web site <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 172 meeting. The agenda will include:

- April 8:
- Opening Plenary Session (Welcome and Introductory Remarks, Review of Agenda, Review Summary of Previous Meeting)
- Convene Working Group—2 (WG), continue development of DO-224B, Minimum Aviation System Performance Standards (MASPS) for Advances VHF Digital Data Communications Including Compatibility with Digital Voice Techniques
- April 9:
- Continue WG-2 development of DO-224B
- Discuss plan for subsequent action in its development
- April 10:
- Reconvene Plenary
- Review relevant activities
- International Civil Aviation Organization (ICAO) AMCP work
- NEXCOM activities
- EUROCAE WG-47 status and issues
- Others as appropriate
- Closing Plenary Session (Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Dated: Issued in Washington, DC, on March 19, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03-7379 Filed 3-27-03; 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 February 2003, there were seven

applications approved. This notice also includes information on two applications, one approved in December, 2002, and the other approved in January 2003, inadvertently left off the December 2002 and January 2003 notices, respectively. Additionally, 11 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.

PFC Applications Approved

Public Agency: Palm Beach County, Department of Airports, West Palm Beach, Florida.

Application Number: 02-07-C-00-PBI.

Application Type: Impose and use a PFC.

PFC Level: \$3.00.

Total PFC Revenue Approved in this Decision: \$22,400,000.

Earliest Charge Effective Date: April 1, 2004.

Estimated Charge Expiration Date: January 1, 2007.

Class of Air Carriers Not Required to Collect PFC'S: Air taxi/commercial operators filing FAA Form 1800-31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Palm Beach International Airport.

Brief Description of Projects Approved for Collection and Use:

Construct security facilities.
Demolition of Delta building.

Brief Description of Projects Approved for Collection:

Apron A expansion.
Replace concourse B passenger loading bridges.
Replace concourse C passenger loading bridges.

Brief Description of Projects Approved for Use:

Terminal signage.
Rehabilitate cabin air system.
Acquire noise land within 65-69 DNL.
Expand terminal concourse C

Decision Date: December 13, 2002.

FOR FURTHER INFORMATION CONTACT: Matthew J. Thys, Orlando Airports District Office, (407) 812-6331.

Public Agency: Metropolitan Nashville Airport Authority, Nashville, Tennessee.

Application Number: 03-10-C-00-BNA.

Application Type: Impose and use a PFC.

PFC Level: \$3.00.

Total PFC Revenue Approved in this Decision: \$8,855,000.

Earliest Charge Effective Date: October 1, 2004.

Estimated Charge Expiration Date: April 1, 2007.

Class of Air Carriers Not Required to Collect PFC'S: Part 135 (air taxi) operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Nashville International Airport.

Brief Description of Projects Approved for Collection and Use:

Land acquisition.

Land acquisition.

Public address system.

Airfield pavement rehabilitation.

Widen three taxiway fillets.

Airport vehicle driving simulator.

1500 gallon aircraft rescue and firefighting (ARFF) vehicle.

Brief Description of Project Partially Approved for Collection and Use:

Security enhancements.

Determination: Consistent with standard practice, the FAA consulted with the Transportation Security Administration (TSA) about justification for the individual elements of this project. The TSA found no justification for one element in this project and that element was not approved.

Decision Date: January 14, 2003.

FOR FURTHER INFORMATION CONTACT:

Cynthia K. Wills, Memphis Airports District Office, (901) 544-3495.

Public Agency: City of Brownsville, Texas.

Application Number: 03-02-C-00-BRO.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in this Decision: \$1,421,192.

Earliest Charge Effective Date: May 1, 2003.

Estimated Charge Expiration Date: June 1, 2008.

Class of Air Carriers Not Required To Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Acquire two commercial passenger bridges and a walkway.

Replace ARFF station and acquire two ARFF vehicles.

Upgrade security equipment.

Conduct planning study.

Reconstruct taxiway H.

Reconstruct terminal apron.

Rehabilitate taxiway edge lighting.

Expand cargo apron.

Seal coat taxiways.

Improve airfield drainage.

Acquire land.

PFC application and administrative fees.

Decision Date: February 7, 2003.

FOR FURTHER INFORMATION CONTACT: G.

Thomas Wade, Southwest Region Airports Division, (817) 222-5613.

Public Agency: City of Durango and Board of County Commissioners, LaPlata County, Durango, Colorado.

Application Number: 02-04-U-00-DRO.

Application Type: Use PFC revenue.

PFC Level: \$3.00

Total PFC Revenue To Be Used in This Decision: \$533,333.

Charge Effective Date: August 1, 2000.

Estimated Charge Expiration Date: March 1, 2003.

Class of Air Carriers Not Required To Collect PFC'S: No change from previous approval.

Brief Description of Projects Approved for Use:

Rehabilitate runway 2/20.

Install distance-remaining signs.

Decision Date: February 10, 2003.

FOR FURTHER INFORMATION CONTACT:

Christopher Schaffer, Denver Airports District Office, (303) 342-1258

Public Agency: Capital Region Airport Commission, Richmond, Virginia.

Application Number: 03-05-C-00-RIC.

Application Type: Impose and use a PFC.

PFC Level: \$3.00.

Total PFC Revenue Approved in this Decision: \$6,032,887.

Earliest Charge Effective Date:

September 1, 2016.

Estimated Charge Expiration Date: May 1, 2025.

Class of Air Carriers Not Required To Collect PFC'S: Part 135 on-demand air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Richmond International Airport.

Brief Description of Projects Approved for Collection and Use:

Extend taxiway A.

Terminal Drive flyover and access roads.

Renovate existing concourses A, B, and C.

Brief Description of Project Approved for Use: Terminal building addition and modification.

Decision Date: February 10, 2003.

FOR FURTHER INFORMATION CONTACT:

Arthur Winder, Washington Airports District Office, (703) 661-1363.

Public Agency: City of Thief River Falls, Minnesota.

Application Number: 03-01-C-00-TVF.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in this Decision: \$636,828.

Earliest Charge Effective Date: June 1, 2003.

Estimated Charge Expiration Date: June 1, 2023.

Class of Air Carriers Not Required To Collect PFC'S: Non-scheduled/on-demand carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Thief River Falls Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate runway 13/31.

Install airport signs and miscellaneous taxiway lights.

Overlay parallel taxiway, general aviation taxiway, and the air transport apron.

Acquire ARFF vehicle.

Reconstruct commercial aircraft parking apron.

Construct crosswind runway.

Construct parallel and connecting taxiways.

PFC application.

Rehabilitate apron.

Install deer fence.

Rehabilitate non-revenue automobile parking lot (including airport entrance road).

Decision Date: February 19, 2003.

FOR FURTHER INFORMATION CONTACT:

Gordon Nelson, Minneapolis Airports District Office, (612) 713-4358.

Public Agency: County of Humboldt, Arcata, California.

Application Number: 03-05-C-00-ACV.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in this Decision: \$93,000.

Earliest Charge Effective Date: June 1, 2003.

Estimated Charge Expiration Date: July 1, 2003.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Project Approved for Collection and Use: Install security/perimeter fence.

Decision Date: February 21, 2003.

FOR FURTHER INFORMATION CONTACT:

Marlys Vandervelde, San Francisco Airports District Office, (650) 876-2806.

Public Agency: Jacksonville Airport Authority, Jacksonville, Florida.

Application Number: 03-08-C-00-JAX.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$68,357,263.

Earliest Charge Effective Date: May 1, 2003.

Estimated Charge Expiration Date: November 1, 2008.

Class of Air Carriers Not Required To Collect PFC'S: Air taxi operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Jacksonville International Airport.

Brief Description of Project Approved for Collection and Use at a \$3.00 PFC Level: Renovation and expansion of landside terminal area, stage 1.

Brief Description of Project Approved for Collection and Use at a \$4.50 PFC Level:

Checked baggage explosive detection system (terminal modifications and

conveyor system to support explosive detection equipment).

Access control and communication center upgrade.

Centralized security checkpoint west courtyard.

Decision Date: February 26, 2003.

FOR FURTHER INFORMATION CONTACT:

Richard Owen, Orlando Airports District Office, (407) 812-6331, extension 19.

Public Agency: City of Chicago, Department of Aviation, Chicago, Illinois.

Application Number: 03-15-C-00-ORD.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$233,267,300.

Earliest Charge Effective Date: April 1, 2017.

Estimated Charge Expiration Date: December 1, 2018.

Class of Air Carriers Not Required To Collect PFC'S: Air taxi.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Chicago O'Hare International Airport (ORD).

Brief Description of Projects Partially Approved for Collection at ORD and Use at ORD at a \$4.50 PFC Level: Runway formulation.

Determination: Partially approved. After submission of the PFC application,

the public agency elected to fund a portion of the project with Airport Improvement Program (AIP) entitlement funds. Therefore, the approved PFC amount is less than what was requested.

School Soundproofing, 2002-2003

Determination: Partially approved. After submission of the PFC application, the public agency deleted two proposed schools from the project. Therefore, the approved PFC amount is less than what was requested.

Brief Description of Project Partially Approved for Collection at ORD and Use at ORD at a \$3.00 PFC Level: Equipment acquisition, 2001-2003.

Determination: Partially approved. The FAA approved 7 of the requested 22 pieces of equipment. The pieces not approved were determined not to be AIP or PFC eligible.

Brief Description of Projects Approved for Collection at ORD and Use at Chicago/Gary Airport at a \$3.00 PFC Level:

Acquire snow removal equipment (snow broom).

Expand snow removal equipment building.

Rehabilitate runway 12/30.

Terminal apron expansion and loading bridge installation.

Decision Date: February 28, 2003.

FOR FURTHER INFORMATION CONTACT:

Thomas E. Salaman, Chicago Airports District Office, (847) 294-7436.

AMENDMENTS TO PFC APPROVALS

Amendment Number city, state	Amendment approved date	Original ap- proved net PFC revenue	Amended approved net PFC revenue	Original es- timated charge exp. date	Amended estimated charge exp. date
94-01-C-04-TUP, Tupelo, MS*	01/15/03	\$457,216	\$457,216	06/01/03	01/01/04
92-01-C-01-1YK, Inyokern, CA	02/07/03	127,500	128,874	09/01/95	09/01/95
95-02-C-01-1YK, Inyokern, CA	02/07/03	248,500	166,978	12/01/97	12/01/97
92-01-C-07-SJC, San Jose, CA	02/07/03	70,558,668	70,625,368	08/01/95	08/01/95
92-02-U-01-SJC, San Jose, CA	02/07/03	NA	NA	08/01/95	08/01/95
98-03-C-01-ILM, Wilmington, NC*	02/11/03	8,179,319	8,179,319	05/01/14	05/01/07
99-02-C-01-OKC, Oklahoma City, OK	02/13/03	7,465,206	6,747,457	04/01/01	04/01/01
98-03-C-02-ILM, Wilmington, NC	02/19/03	8,179,319	7,984,994	05/01/07	04/01/07
02-05-C-01-GPT, Gulfport, MS	02/20/03	3,765,993	1,031,474	06/01/05	05/01/03
01-10-C-01-OAK, Oakland, CA*	02/26/03	32,000,000	32,000,000	10/01/03	09/01/03
01-11-C-01-SJC, San Jose, CA	02/28/03	123,736,491	118,161,491	02/01/08	07/01/06

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 Tupelo, MS, this change is effective on April 1, 2003. For Oakland, CA and Wilmington, NC, this change is effective on May 1, 2003.

Dated: Issued in Washington, DC, on March 20, 2003.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 03-7381 Filed 3-27-03; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 589]

Calculation of Variable Costs in Rate Complaint Proceedings Involving Non-Class I Railroads

AGENCY: Surface Transportation Board, Transportation.

ACTION: Policy Statement.

SUMMARY: The Surface Transportation Board concludes that it will determine the variable costs of non-Class I railroads in rail rate reasonableness cases using Class I railroad regional average costs and making appropriate adjustments to those average costs on a case-by-case basis.

EFFECTIVE DATE: This policy is effective April 27, 2003.

FOR FURTHER INFORMATION CONTACT: Rachel D. Campbell (202) 565-1568. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Copies of the Board's decision may be purchased from Dã-2-Dã Legal Copy Service by calling (202) 293-7776 (assistance for the hearing impaired is available through FIRS at 1-800-877-8339) or visiting Suite 405, 1925 K Street, NW., Washington, DC 20423.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: March 21, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03-7334 Filed 3-27-03; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34305]

The Burlington Northern and Santa Fe Railway Company—Construction and Operation Exemption—Merced County, CA

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction and operation by The Burlington Northern and Santa Fe Railway Company of an 850-foot line of railroad in Merced County, CA.

DATES: The exemption will not become effective until the environmental review process is completed. Once that process is completed, the Board will issue a further decision addressing the environmental matters and establishing an exemption effective date at that time, if appropriate. Petitions to reopen must be filed by April 17, 2003.

ADDRESSES: An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34305, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of all pleadings must be served on petitioner's representative Erika Z. Jones, Mayer, Brown, Rowe & Maw, 1909 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565-1600. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Copies of the decision may be purchased from Dã 2 Dã Legal Copy Service by calling (202) 293-7776 (assistance for the hearing impaired is available through FIRS at 1-800-877-8339) or by visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: March 21, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03-7521 Filed 3-27-03; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34210]

Sunflower Rail Company, LLC—Construction and Operation Exemption—Finney County, KS

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction by Sunflower Rail Company, LLC (SRC)¹ of approximately 4.7 miles of railroad line in the vicinity of Garden City in Finney County, KS.²

DATES: The exemption will not become effective until the environmental review process is completed. Once that process is completed, the Board will issue a further decision addressing the environmental matters and establishing an exemption effective date at that time, if appropriate. Petitions to reopen must be filed by April 17, 2003.

ADDRESSES: An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34210, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of all pleadings must be served on petitioner's representative David A. Hirsh, Harkins Cunningham, 801 Pennsylvania Avenue, NW., Suite 600, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565-1600 [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Copies of the decision may be purchased from Dã to Dã Legal Copy Service by calling (202) 293-7776 (assistance for the hearing impaired is available through FIRS at 1-800-877-8339) or by visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

¹ SRC is a subsidiary of Sunflower Electric Power Corporation.

² The proposed construction involves a crossing of a line of The Burlington Northern and Santa Fe Railway Company (BNSF). SRC states that while it is hopeful it can reach an agreement with BNSF permitting it to cross BNSF's line, SRC has concurrently filed a related petition in STB Finance Docket No. 34210 (Sub-No. 1), *Sunflower Rail Company, LLC—Petition for Crossing Authority Under 49 U.S.C. 10901(d)*, seeking authority to cross the BNSF track.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: March 21, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams,
Secretary.

[FR Doc. 03-7519 Filed 3-27-03; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Navigators Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury

ACTION: Notice.

SUMMARY: This is Supplement No. 11 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002, at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874-1033.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2002 Revision, on page 44320 to reflect this addition:

Company Name: Navigators Insurance Company. Business Address: One Penn Plaza—55th Floor, New York, NY 10119-0002. Phone: (212) 244-2333. Underwriting Limitation b/: \$10,190,000. Surety Licenses c/: AL, AK, AZ, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, LA, MD, MI, MN, MS, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WV, WI, WY. Incorporated in: New York.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at <http://www.fms.treas.gov/c570>. A hard copy may be purchased from the Government Printing Office (GPO)

Subscription Service, Washington, DC, Telephone (202) 512-1800. When ordering the Circular from GPO, use the following stock number: 769-004-04067-1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: March 13, 2003.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 03-7391 Filed 3-27-03; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, April 29, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1-888-912-1227, or 206-220-6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be held Tuesday, April 29, 2003 from 2 p.m. EST to 3 p.m. EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 206-220-6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms. O'Brien can be reached at 1-888-912-1227 or 206-220-6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 18, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03-7526 Filed 3-27-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self-Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self-Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Thursday, May 1, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1-888-912-1227, or 206 220-6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self-Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel will be held Thursday, May 1, 2003 from 3 p.m. EST to 4 p.m. EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 206-220-6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS.y W-406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms. O'Brien can be reached at 1-888-912-1227 or 206-220-6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 18, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03-7527 Filed 3-27-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the State of California)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, May 12, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien at 1-888-912-1227, or 206-220-6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Monday, May 12th, 2003 from 12:30 p.m. Pacific Time to 2:30 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 206-220-6098, or write to Mary Peterson O'Brien, TAP Office, 915 2nd

Avenue, MS W-406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1-888-912-1227 or 206-220-6098.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 18, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03-7528 Filed 3-27-03; 8:45 am]

BILLING CODE 4830-01-P

Corrections

Federal Register

Vol. 68, No. 60

Friday, March 28, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Islander East Pipeline Company From an Objection by the Connecticut Department of Environmental Protection

Correction

In notice document 03-7016 beginning on page 14400 in the issue of Tuesday, March 25, 2003, make the following corrections:

1. On page 14400, in the third column, under the heading **DATES**, in the fourth line, “will extended” should read, “will be extended”.

2. On the same page, in the same column, under the same heading, in the ninth line, “recommended” should read, “recommenced”.

3. On page 14401, in the first column, under the heading **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the seventh line, “stay on” should read, “stay was granted on”.

[FR Doc. C3-7016 Filed 3-27-03; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Friday,
March 28, 2003**

Part II

Department of Health and Human Services

**Centers for Medicare and Medicaid
Services**

**42 CFR Part 416
Medicare Program; Update of Ambulatory
Surgical Center List of Covered
Procedures Effective July 1, 2003; Final
Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 416

[CMS-1885-FC]

RIN 0938-AM02

Medicare Program; Update of Ambulatory Surgical Center List of Covered Procedures Effective July 1, 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period will make additions to and deletions from the current list of Medicare approved ambulatory surgical center (ASCs) procedures. In addition, it responds to comments received on the June 12, 1998 proposed rule (63 FR 32290) that addressed proposed additions to and deletions from the list of ASC covered procedures. This rule also implements requirements of section 1833(i)(1) and (2) of the Social Security Act.

DATES: *Effective date:* These regulations are effective for services furnished on or after July 1, 2003.

Comment date: We will consider comments on new proposed additions to and deletions from the ASC list of covered procedures if we receive them at the appropriate address, as provided below, no later than May 27, 2003.

ADDRESSES: Mail written comments (1 original and 2 copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1885-FC, P.O. Box 8013, Baltimore, MD 21244-8013.

To insure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS-1885-FC.

If you prefer, you may deliver (by hand or courier) your written comments (1 original and 2 copies) to one of the following addresses: Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 or Room C5-14-03, 7500 Security Boulevard, Baltimore, MD 21244-8013.

(Because access to the interior of the HHH Building is not readily available to

persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Bob Cereghino, 410-786-4675.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 2 weeks after the close of the comment period, at the headquarters of the Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 5 p.m. To schedule an appointment to view public comments, please call (410) 786-7197.

Copies

To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512-1800 or by faxing to (202) 512-2250. The cost for each copy is \$10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO access, a service of the U.S. Government Printing Office. The Web site address is <http://www.access.gpo.gov/nara/index.html>.

I. Background

A. Legislative History

Specific provisions of the proposed rule are discussed in detail in Section II below.

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) provides that benefits under the Medicare Supplementary Medical Insurance program (Part B) include payment for facility services furnished in connection with surgical procedures we specify and which are performed in an ambulatory surgical center (ASC). We are to review and update the list of ASC procedures biennially. To participate in the Medicare program as an ASC, a facility must meet the standards specified under section 1832(a)(2)(F)(i) of the Act and 42 CFR 416.25, which sets forth general conditions and requirements for ASCs.

Generally, there are two primary elements in the total cost of performing a surgical procedure—the cost of the physician's professional services for performing the procedure and the cost of services furnished by the facility where the procedure is performed (for example, surgical supplies and equipment and nursing services). Section 1833(i)(2)(A) of the Act addresses what the ASC facility fee is intended to represent and how the amount of the Medicare payment for ASC facility services is to be determined. It requires us to review and update ASC payment amounts annually.

The ASC payment rate is to be a standard overhead amount established on the basis of our estimate of a fair fee that takes into account the costs incurred by ASCs generally in providing facility services in connection with performing a specific procedure. The Report of the Conference Committee accompanying section 934 of the Omnibus Budget Reconciliation Act of 1980 (Pub. L. 96-499), which enacted the ASC benefit in December 1980, states that this overhead factor is expected to be calculated on a prospective basis using sample survey and similar techniques to establish reasonable estimated overhead allowances, which take account of volume (within reasonable limits), for each of the listed procedures. (See H.R. Rep. No. 1479, at 134 (1980).) To estimate the amount of those reasonable allowances, we are required by section 1833(i)(2)(A)(i) of the Act to survey the actual audited costs incurred by a representative sample of facilities in connection with a representative sample of procedures. Because payment for ASC facility services is subject to the usual Medicare Part B deductible and coinsurance requirements, Medicare pays participating ASCs 80 percent of the prospectively-determined rate, adjusted for regional wage variations. Section 1833(i)(2)(A)(ii) of the Act requires that the ASC payment rates result in substantially lower Medicare

expenditures than would have been paid if the same procedure had been performed on an inpatient basis in a hospital. Section 1833(i)(2)(A)(iii) of the Act requires that payment for insertion of an intraocular lens (IOL) include an allowance for the IOL that is reasonable and related to the cost of acquiring the class of lens involved.

Section 13531 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) (Pub. L. 103-66), prohibited us from providing for any inflation update in the payment amounts for ASCs determined under section 1833(i)(2)(A) of the Act for fiscal years (FYs) 1994 and 1995. Section 13533 of OBRA 1993

established \$150 as the amount of payment allowed for an IOL inserted during or subsequent to cataract surgery in an ASC on or after January 1, 1994, and before January 1, 1999. Section 141(a)(1) of the Social Security Act Amendments of 1994 (SSAA 1994) (Public Law 103-432) amended section 1833(i)(2)(A)(i) of the Act to require that a quinquennial survey of ASCs be taken beginning not later than January 1, 1995.

Section 141(a)(2) of SSAA 1994 added section 1833(i)(2)(C) to the Act to provide that, beginning with FY 1996, there be an adjustment for inflation during fiscal years when we do not update ASC rates based on actual audited costs determined by surveying a representative sample of facilities. Section 1833(i)(2)(C) of the Act provides that ASC payment rates are to be increased by the percentage increase in the consumer price index for urban consumers (CPI-U), that we estimate for the 12-month period ending with the midpoint of the year involved, beginning with FY 1996. Section 141(a)(3) of SSAA 1994 amended section 1833(i)(1) of the Act to require us to consult with appropriate medical organizations in specifying the procedures that constitute the ASC list.

Section 141(b) of SSAA 1994 requires us to establish a process for reviewing the appropriateness of the payment amount provided under section 1833(i)(2)(A)(iii) of the Act for IOLs with respect to a class of new-technology IOLs. That process was the subject of a separate notice of proposed rulemaking entitled *Adjustment in Payment Amounts for New Technology Intraocular Lenses* published in the **Federal Register** on September 9, 1997 (62 FR 46698).

Section 4555 of BBA 1997 amended section 1833(i)(2)(C) of the Act to limit the annual adjustment of ASC payment rates provided for in that paragraph to the CPI-U increase reduced by 2.0 percentage points (but not below zero) for fiscal years 1998 through 2002.

B. Extensions of Comment Periods for Proposed Rule

On June 12, 1998, we published in the **Federal Register** a proposed rule that would revise the ratesetting methodology and payment rates and update the list of surgical procedures payable by Medicare for ASCs. The closing date of the comment period for the June 12, 1998 proposed rule was extended several times. The first extension notice was published in the **Federal Register** August 14, 1998 (63 FR 43655). The reason for the extension was that, due to the complexity and scope of the proposed rule, numerous members of the industry and professional associations requested more time to analyze the potential consequences of the rule. The closing date was extended to September 10, 1998.

On September 8, 1998, a proposed rule outlining the provisions of a Medicare prospective payment system (PPS) for hospital outpatient services was published in the **Federal Register** (63 FR 47551). On October 1, 1998 a second extension notice extending the comment period for the June 12, 1998 proposed rule was published in the **Federal Register** (63 FR 52663) with a new closing date of November 9, 1998. This second extension notice was issued because members of trade and professional associations urged us to postpone implementing the changes contained in the June 12, 1998 ASC proposed rule from October 1, 1998 to January 1, 1999 to coincide with implementation of the OPSS. They based their argument for delaying implementation of the ASC changes both on the need for more time for cross-analysis of the ASC proposed rule with the hospital outpatient prospective payment system (OPSS) proposed rule and the overlap and interrelationship between the two payment systems. This second extension notice also explained that there would be no inflationary update of the ASC rates on October 1, 1998 because reducing the fiscal year CPI-U factor of 2.1 percent by 2.0 percent would result in a change of less than \$1 for each payment group.

A third notice, which extended the comment period to January 8, 1999, was published in the **Federal Register** on November 15, 1998. This extension was necessary because the OPSS proposed rule comment period was being extended and Medicare payments to ASCs were closely linked to the way Medicare proposed to pay hospitals under the OPSS. A fourth extension notice was published in the **Federal Register** on January 12, 1999 (64 FR

1785). The reason given was the same as the prior extension notice, that is, because the comment period for the OPSS rule was being extended for further examination and because the two proposed payment systems were closely related. The new closing date of March 9, 1999 would run concurrently with the OPSS extension. On March 2, 1999, a fifth extension notice with the same rationale as the fourth notice was published in the **Federal Register** (64 FR 12278) and extended the comment period for an additional 60 days.

The sixth and final extension was published in the **Federal Register** July 6, 1999 (64 FR 36321). On June 30, 1999 we published a correction notice (64 FR 35258) in the **Federal Register** that corrected a number of technical and typographical errors contained in the September 8, 1998 OPSS proposed rule. To provide commenters adequate time to analyze the potential impact of the corrections to the OPSS proposed rule on ASC payments and because of the link between Medicare ASC payments and hospital outpatient payments, we found it appropriate to extend the comment period for the ASC proposed rule to July 30, 1999.

II. Provisions of the Proposed Regulations

In the June 12, 1998, proposed rule, we proposed the following:

- Clarification of the definition of ASC.
- Revision of the basic requirements in § 416.3 and § 416.4.
- Additions to and deletions from the ASC list.
- Revision of the criteria for determining surgical procedures payable in an ASC in § 416.65 and elimination of numeric thresholds.
- Establishment of an ASC Advisory Group.
- Replacement of eight ASC payment groups with ambulatory payment classification (APC) groups that are clinically homogeneous and consist of procedures with similar resource inputs, modeled on the APC groups proposed for the OPSS.
- Redefinition of the ASC ratesetting methodology.
- Rebased payment rates to reflect a survey of ASC costs that was conducted in 1994.

A combination of circumstances has resulted in our delaying publication of a final rule to implement the changes proposed in the June 12, 1998 ASC proposed rule. First, as discussed above, we extended the public comment period to July 30, 1999 in response to requests from the industry to allow adequate opportunity for comparison of the

proposed ASC rates and ratesetting methodology with the proposed OPSS that was published in the **Federal Register** on September 8, 1998, followed by publication of an OPSS correction notice on June 30, 1999.

Notwithstanding the close of the comment period on July 30, 1999, the changes required to implement a new payment system for ASC facility services could not be implemented because our contractors had to prepare Medicare claims processing systems to be Year 2000 ("Y2K") compliant.

On November 29, 1999, the Balanced Budget Refinement Act of 1999 (BBRA)(Pub. L. 106-113) was enacted. Section 226 of BBRA required that full implementation of the proposed ASC rates be delayed over a 3 year period. Specifically, the BBRA stated that if a prospective payment system for ASCs, that is, one involving the June 1998 proposed rates, was implemented prior to incorporating data from a 1999 or subsequent Medicare cost survey, in the first year of implementation no more than 1/3 of the new ASC payment would consist of this new rate and the remainder would consist of the current payment rate. In the following year, no more than 2/3 of the new rate would consist of the June 1998 proposed rate and the remainder would consist of the current rate.

Significant changes in the OPSS were also required as a result of the enactment of the BBRA. Substantial pressures to implement the OPSS combined with the new OPSS requirements resulting from enactment of the BBRA compelled us to focus all available resources on the OPSS, which was implemented on August 1, 2000.

On December 21, 2000, the Medicare, Medicaid and SCHIP Benefit Improvement and Protection Act of 2000 (BIPA)(Pub. L. 106-554) was enacted. Section 424 of BIPA prohibited implementation of a revised prospective payment system for ASC facility services before January 1, 2002, extended the phase-in of the APC system for ASCs to four years and required that by January 1, 2003, ASC rates be rebased using data from a 1999 or later Medicare survey.

The changes mandated by the BBRA and the BIPA, combined with the diversion of resources necessitated by Y2K compliance activities and implementation and start-up issues related to the OPSS have resulted in the delay in issuing a final ASC rule to implement the changes in the June 12, 1998 proposed rule. As stated above, Section 424 of BIPA requires that payment rates effective January 1, 2003 be based on a survey of ASCs conducted

after 1999. We have developed an ASC survey instrument, but our experience in collecting ASC cost data in 1994 suggests that completion of the survey instrument, followed by an audit of the data reported by ASCs and the subsequent compilation of cost data upon which to base ASC payment rates, takes at least 2 years. Therefore, rather than delaying further the biennial update of the ASC list mandated by the statute, in this final rule with comment period we are making final only the additions to and deletions from the ASC list that we proposed in the June 12, 1998 proposed rule. We are not implementing at this time any of the other changes proposed in the June 1998 proposed rule. That is, we are not making final the regulatory changes in part 416 that we proposed or the proposed ratesetting methodology based on APC groups and survey data of ASC costs collected in 1994. We recognize that we are not in compliance with the requirements enacted by section 424 of BIPA, that we rebase rates by January 1, 2003 using data from a survey of ASC costs taken in 1999 or later. While we are committed to rebasing and restructuring the ASC payment rates, we are also committed to ensuring that the method we use to rebase ASC payment rates does not inadvertently result in rates that amplify payment differentials across ambulatory sites of service. We are studying approaches to ratesetting, some of which may require legislative change that will provide adequate payments to ASCs for surgical services and that are in line with what Medicare pays under the OPSS and the physician fee schedule for the same service.

In section III of this preamble, we respond to comments that we received timely on our proposed additions to and deletions from the ASC list. In addition, we are proposing to add to the list a limited number of new CPT codes that were added to CPT in 1999, 2000, 2001, 2002, and 2003 and that are similar to procedures on the updated ASC list. These new CPT codes are designated by an "A*" in column 2 of the Addendum. We solicit comments on the addition of these new CPT codes and the payment rates proposed for these new codes.

In the June 1998 proposed rule, we listed codes with corresponding new payment rates based on the 1994 survey of ASC costs. Because we do not have current survey data upon which to base new payment rates, we have assigned the codes being added to the ASC list in this final rule to one of the nine existing payment groups under which payments for ASC facility services are currently made. With the guidance of our medical advisors, we matched additions to the

ASC list with codes for procedures already on the ASC list that they most closely resemble in terms of clinical work and resource inputs such as equipment, supplies, and time required in the operating suite. We assigned the additions to the list to the same payment group to which the matching codes are currently assigned. For example, our medical advisors determined that CPT code 24341, Repair tendon or muscle, upper arm or elbow, each tendon or muscle, primary or secondary (excludes rotator cuff), is in the same family of codes as CPT code 24340, Tenodesis of biceps tendon at elbow (separate procedure) and CPT code 24342, Reinsertion of ruptured biceps or triceps tendon, distal, with or without tendon graft. CPT codes 24340 and 24342 are both currently assigned to payment group 3. Because the resource inputs such as supplies, equipment, and time in the operating suite for CPT code 24341 are similar to the resources required to perform CPT codes 24340 and 24342, we assigned CPT code 24341 to group 3 to maintain consistency in payment for this family of closely related codes.

In the case of some codes, such as CPT 47511, Introduction of percutaneous transhepatic stent for biliary drainage, we identified procedures on the current list that they most closely resemble clinically and in terms of resource inputs, but we assigned the code to a higher payment group to take into account expensive equipment or supplies that are required to perform the procedure. Therefore, while CPT code 47511 is similar to CPT code 47510, which is currently on the ASC list and assigned to payment group 2, we assigned CPT code 47511 to payment group 9 to take into account the added cost of expensive supplies required for this procedure.

There are some procedures that we proposed to add to the ASC list in the June 1998 proposed rule that we are not adding to the list at this time. We are not adding to the ASC list procedures that are inconsistent with our current criteria in § 416.65 for determining surgical procedures payable in an ASC. Also, we are not adding to the list procedures that would otherwise have met the criteria for inclusion on the ASC list, except that they would be significantly overpaid in the lowest ASC payment group, which could create an incentive to shift these procedures to an ASC setting. The payment rates proposed for many of these procedures in the June 12, 1998 proposed rule were significantly less than the lowest current ASC payment group because we were proposing a different ratesetting method

using APC groups. We are also eliminating proposed additions to the ASC list that were deleted from CPT after 1998, and there are some codes that we proposed to add but are not adding on the basis of comments. The codes that we are not adding to the ASC list for these reasons are listed in the following table. We recognize that most of the additions and deletions to the ASC list that are being implemented through this final rule were proposed nearly 5 years ago. Our medical advisors have reviewed all of the changes reflected in this final rule and we believe that, taking patient safety into account, the final updated list reasonably reflects contemporary surgery performed in an ASC in the year 2003.

PROCEDURES PROPOSED FOR ADDITION TO THE ASC LIST THAT ARE NOT BEING ADDED

HCPSCS	Short descriptor
11752	Remove nail bed/finger tip.
11760	Repair of nail bed.
11762	Reconstruction of nail bed.
11920	Correct skin color defects.
11921	Correct skin color defects.
11922	Correct skin color defects.
11950	Therapy for contour defects.
11951	Therapy for contour defects.
11952	Therapy for contour defects.
11954	Therapy for contour defects.
12001	Repair superficial wound(s).
12002	Repair superficial wound(s).
12004	Repair superficial wound(s).
12011	Repair superficial wound(s).
12013	Repair superficial wound(s).
12014	Repair superficial wound(s).
12015	Repair superficial wound(s).
12031	Layer closure of wound(s).
12032	Layer closure of wound(s).
12041	Layer closure of wound(s).
12042	Layer closure of wound(s).
12051	Layer closure of wound(s).
12052	Layer closure of wound(s).
12053	Layer closure of wound(s).
15819	Plastic surgery, neck.
15836	Excise excessive skin tissue.
15837	Excise excessive skin tissue.
15838	Excise excessive skin tissue.
15839	Excise excessive skin tissue.
15860	Test for blood flow in graft.
16010	Treatment of burn(s).
16040	Deleted by CPT.
16041	Deleted by CPT.
16042	Deleted by CPT.
17106	Destruction of skin lesions.
17107	Destruction of skin lesions.
17108	Destruction of skin lesions.
17304	Chemosurgery of skin lesion.
17305	2nd stage chemosurgery.
17306	3rd stage chemosurgery.
17307	Followup skin lesion therapy.
17310	Extensive skin chemosurgery.
19396	Design custom breast implant.
21030	Removal of face bone lesion.
21031	Remove exostosis, mandible.
21032	Remove exostosis, maxilla.

PROCEDURES PROPOSED FOR ADDITION TO THE ASC LIST THAT ARE NOT BEING ADDED—Continued

HCPSCS	Short descriptor
21110	Interdental fixation.
21120	Reconstruction of chin.
21125	Augmentation, lower jaw bone.
21260	Revise eye sockets.
20500	Injection of sinus tract.
20950	Fluid pressure, muscle.
24640	Treat elbow dislocation.
24650	Treat radius fracture.
25500	Treat fracture of radius.
25530	Treat fracture of ulna.
25560	Treat fracture radius & ulna.
25600	Treat fracture radius/ulna.
25622	Treat wrist bone fracture.
25630	Treat wrist bone fracture.
25650	Treat wrist bone fracture.
26600	Treat metacarpal fracture.
26641	Treat thumb dislocation.
26670	Treat hand dislocation.
26700	Treat knuckle dislocation.
26720	Treat finger fracture, each.
26725	Treat finger fracture, each.
26740	Treat finger fracture, each.
26750	Treat finger fracture, each.
26755	Treat finger fracture, each.
26770	Treat finger dislocation.
26775	Treat finger dislocation.
27200	Treat tail bone fracture.
27220	Treat hip socket fracture.
27256	Treat hip dislocation.
27556	Treat knee dislocation.
28001	Drainage of bursa of foot.
28010	Incision of toe tendon.
28108	Removal of toe lesions.
28124	Partial removal of toe.
28220	Release of foot tendon.
28230	Incision of foot tendon(s).
28232	Incision of toe tendon.
28272	Release of toe joint, each.
28360	Reconstruct cleft foot.
28430	Treatment of ankle fracture.
28450	Treat midfoot fracture, each.
28455	Treat midfoot fracture, each.
28470	Treat metatarsal fracture.
28475	Treat metatarsal fracture.
28490	Treat big toe fracture.
28495	Treat big toe fracture.
28510	Treatment of toe fracture.
28515	Treatment of toe fracture.
28530	Treat sesamoid bone fracture.
28540	Treat foot dislocation.
28570	Treat foot dislocation.
28600	Treat foot dislocation.
28630	Treat toe dislocation.
28660	Treat toe dislocation.
30901	Control of nosebleed.
31040	Exploration behind upper jaw.
31502	Change of windpipe airway.
31520	Diagnostic laryngoscopy.
32960	Therapeutic pneumothorax.
36493	Repositioning of cvc.
37618	Ligation of extremity artery.
40702	Repair cleft lip/nasal.
40830	Repair mouth laceration.
41822	Excision of gum lesion.
41823	Excision of gum lesion
42227	Lengthening of palate.
42326	Create salivary cyst drain.
42400	Biopsy of salivary gland
42800	Biopsy of throat.
42842	Extensive surgery of throat

PROCEDURES PROPOSED FOR ADDITION TO THE ASC LIST THAT ARE NOT BEING ADDED—Continued

HCPSCS	Short descriptor
42844	Extensive surgery of throat.
42970	Control nose/throat bleeding
43020	Incision of esophagus
43030	Throat muscle surgery
43761	Reposition gastrostomy tube.
45300	Proctosigmoidoscopy dx.
45303	Proctosigmoidoscopy dilate.
45330	Diagnostic sigmoidoscopy
46604	Anoscopy and dilation.
46614	Anoscopy/control bleeding.
46900	Destruction, anal lesion(s).
46910	Destruction, anal lesion(s).
46916	Cryosurgery, anal lesion(s).
49429	Removal of shunt.
50590	Lithotripsy.
51705	Change of bladder tube
52265	Cystoscopy and treatment
52301	Cystoscopy and treatment
52339	Deleted by CPT.
53025	Incision of urethra.
53060	Drainage of urethra abscess.
53852	Prostatic rf thermotx.
54050	Destruction, penis lesion(s).
54055	Destruction, penis lesion(s).
54056	Cryosurgery, penis lesion(s).
54402	Deleted by CPT.
54407	Deleted by CPT.
54409	Deleted by CPT.
55450	Ligation of sperm duct.
56311	Deleted by CPT.
56312	Deleted by CPT.
56313	Deleted by CPT.
56314	Deleted by CPT.
56318	Deleted by CPT.
56320	Deleted by CPT.
56346	Deleted by CPT.
56353	Deleted by CPT.
56355	Deleted by CPT.
56501	Destroy, vulva lesions, simp.
57284	Repair paravaginal defect.
57288	Repair bladder defect.
57460	Cervix excision.
57555	Remove cervix/repair vagina.
58345	Reopen fallopian tube.
58970	Retrieval of oocyte
59300	Episiotomy or vaginal repair.
60100	Biopsy of thyroid.
60210	Partial thyroid excision.
60240	Removal of thyroid
61000	Remove cranial cavity fluid.
61001	Remove cranial cavity fluid.
62292	Injection into disk lesion.
62298	Deleted by CPT
63615	Remove lesion of spinal cord.
64555	Implant neuroelectrodes.
64560	Implant neuroelectrodes.
64565	Implant neuroelectrodes.
64761	Incision of pelvis nerve.
65286	Repair of eye wound.
65450	Treatment of corneal lesion.
65820	Relieve inner eye pressure.
65855	Laser surgery of eye.
65860	Incise inner eye adhesions.
66761	Revision of iris.
66762	Revision of iris.
66770	Removal of inner eye lesion.
66820	Incision, secondary cataract.
67101	Repair detached retina
67110	Repair detached retina.
67208	Treatment of retinal lesion.

PROCEDURES PROPOSED FOR ADDITION TO THE ASC LIST THAT ARE NOT BEING ADDED—Continued

HCPCS	Short descriptor
67343	Release eye tissue.
68100	Biopsy of eyelid lining.
68110	Remove eyelid lining lesion.
68135	Remove eyelid lining lesion.
69433	Create eardrum opening.

We are not adding to the ASC list CPT code 50590 Extracorporeal Shock Wave Lithotripsy (ESWL), for which we had proposed a payment of \$2107 in the June 1998 proposed rule. In *American Lithotripsy Society v. Sullivan*, 785, F. Supp. 1035 (D.D.C. 1992), the District Court ordered that we “publish the data and other information we are relying on in setting a (lithotripsy) rate and allow time for comment before issuing a final notice * * *”. The data and other information that we would rely on in setting a payment rate for ESWL are part of the ratesetting methodology that we proposed in the June 1998 proposed rule. Because we are not making that ratesetting methodology final at this time, we might not be in compliance with the District Court order if we were to add CPT code 50590 to the ASC list in this final rule under the current payment rate structure. In addition, comments submitted by the American Lithotripsy Society opposed the \$2,107 payment rate that we proposed in the June 1998 proposed rule. Therefore, we are not including CPT code 50590 among the additions to the ASC list that are implemented by this final rule.

III. Analysis of and Responses to Public Comments

In response to the publication of the June 12, 1998 proposed rule, we received approximately 13,000 comments, many of which were duplicate comments that were resubmitted each time we extended the comment period. We received comments from individual ASCs, physicians, health care workers, professional and trade associations, and medical societies and organizations. The majority of the comments addressed our proposal to adopt ambulatory payment classification (APC) groups as the basis for setting ASC payment rates. In addition, we received numerous comments regarding our proposal to package payment for corneal tissue into the payment rate for corneal transplant surgery. We also received numerous comments regarding proposed reductions in payment for gastroenterological procedures. Those comments will be addressed in a

subsequent rule when we implement changes in the ASC ratesetting methodology. In this final rule with comment, we only respond to comments that address additions to and deletions from the list of approved procedures.

Overall, the commenters who addressed our proposed additions to and deletions from the ASC list favored the proposed additions. Most commenters supported expansion of the ASC list to the maximum possible extent to permit Medicare payment to ASCs for procedures that are performed on an outpatient basis in hospitals. We respond below to commenters who recommended the addition or deletion of specific CPT codes. In reviewing the comments regarding our proposed additions to and deletions from the ASC list, we consulted our medical advisors, and we took into account Congressional intent when the ASC benefit was enacted as well as the current standards for the ASC list that are codified in § 416.65.

As we explain above, we do not include in the list of ASC approved procedures, procedures currently performed on an ambulatory basis in a physician's office that do not generally require the more elaborate facilities of an ASC. Also, the ASC list does not include procedures that are appropriately performed in an inpatient hospital setting but would not be safely performed in an ASC, consistent with the criteria in § 416.65(b)(3).

We also recognized that there are some procedures that might be appropriately performed in ASC for the younger patient who is generally healthy. But for the larger number of beneficiaries whose health is more likely to be compromised by age or disability, an ASC may be a questionable setting for those same procedures. Therefore, we are adding to the ASC list only those procedures that can be safely performed in an ASC on the general Medicare population in at least a significant number of cases.

We believe that the ASC list resulting from the additions and deletions that we are implementing in this final rule with comment is an improvement over the existing list. We have updated the ASC list by adding a significant number of the procedures that we proposed to add in the June 1998 proposed rule as well as new CPT codes established since 1998 that are consistent with our criteria for the ASC list. The resulting updated list allows ASCs to furnish to Medicare beneficiaries surgical services that reflect the practice of contemporary surgery without compromising patient safety. We will continue to update the list through notice and comment within

the biennial timeframe established under the statute. As part of the next biennial update, we will also consider proposing revised criteria to apply in determining which procedures are appropriate for the ASC list.

Comment: A number of commenters favored elimination of the ASC list. The commenters stated that the decision regarding where to perform a procedure should rest with the physician and the patient, not with CMS.

Response: Section 1833(i)(1) of the Act requires us to determine which surgical procedures are safely and appropriately performed in an ASC. Therefore, we cannot adopt this recommendation.

Comment: A national medical association commented that we should not add certain codes that we proposed to add because these procedures are hospital procedures and are not appropriate for same day surgery in an ASC. These procedures are CPT codes 57284 (paravaginal defect repair), 57288 (stress incontinence), 57555 (cervical stump excision), 58345 (fallopian tube catheter), and 57460 (colposcopy).

Response: After a review of our most recent claims data for site of service and an examination of the clinical nature of the surgical procedures in question, we agree with the commenter, and we are not adding these codes to the list.

Comment: The same commenter agreed with our proposal to add CPT codes 57291 (artificial vagina construction) and 57556 (cervical stump excision) to the ASC list and our proposal to delete CPT codes 56405 (vulva drainage) and 57800 (cervix dilation) from the ASC list.

Response: We agree with the commenter. We are adding CPT codes 57291 and 57556 to the ASC list and deleting CPT codes 56405 and 57800.

Comment: A medical specialty society commented that we should delete from the ASC list CPT codes 15842 (microsurgical muscle graft), 26035 (decompression fingers, injection injury), 26037 (decompressive fasciotomy, hand), 27440 (arthroplasty, knee, tibial plateau), 42225 (palatoplasty w. attached pharyngeal flap), 60220 (total thyroid lobectomy), and 60225 (total thyroid lobectomy). The commenter states that these procedures are hospital procedures and not appropriate for an ASC.

Response: We agree with the commenter and we are deleting these 7 procedures from the current list.

Comment: The same commenter disagreed with our proposal to add to the list the following procedures: CPT codes 42842 (extensive throat surgery), 42844 (extensive throat surgery), 57284

(paravaginal defect repair), 60210 (thyroid partial excision), and 60240 (thyroid removal). The commenter stated that these procedures are hospital procedures and not appropriate for same day surgery performance in an ASC. Another medical organization also recommended not adding CPT code 57284 to the list.

Response: Our medical staff have reviewed these codes and agree with the commenters. Therefore, we are not implementing these proposed additions to the list.

Comment: The same medical specialty society further stated that the following codes should be deleted from the ASC list: 15840 (face nerve palsy graft), 15841 (face nerve palsy graft), 15845 (skin and muscle repair, face), 19318 (large breast reduction), and 19340 (immediate breast prosthesis). The commenter stated these procedures are not appropriate for an ASC setting.

Response: Our medical staff have reviewed the clinical nature of these procedures and have determined that they may appropriately be performed in an ASC. Further, our 2001 claims data show that these procedures are being performed in a significant number of cases in an outpatient setting. Therefore, we are retaining these procedures on the ASC list.

Comment: The same commenter states that we should not add proposed CPT code 40700 (repair cleft lip, nasal), because this procedure is not appropriate for an ASC.

Response: Our 2001 claims data indicate that equal numbers of cases were reported as being performed in a hospital inpatient, hospital outpatient, and ASC setting. Our medical advisors reviewed the clinical nature of this procedure and determined that it is appropriately performed in an ASC setting. Therefore, we will add this code to the list.

Comment: Commenters suggested that we add to the ASC list the following CPT codes: 27096 (injection, sacroiliac joint), 62284 (myelography, injection), 62287 (Aspiration/decompression, nucleus pulposus), 62290 (discography injection, lumbar), 62291 (discography injection, cervical), 62292 (chemonucleolysis injection), 62298 (injection, other than anesthetic), 64640 (destruction by neurolytic agent, peripheral nerve), and 64714 (neuroplasty).

Response: Our medical staff reviewed the clinical nature of these codes and agreed that CPT codes 27096, 62292, and 62298 were appropriate additions to the ASC list. Note that in CY 2000, CPT code 62298 was replaced by code 62310, which we added to the ASC list in 2000

by program memorandum. CPT codes 27096 and 62292, while clinically appropriate for the list, would be significantly overpaid in the lowest ASC payment group, so we are not adding them to the ASC list. CPT code 64714 is already on the ASC list. CPT codes 62284, 62290 and 62291 are codes for injections used in connection with diagnostic imaging procedures that are not payable as ASC services. Therefore, we would not pay separately for these procedures in the ASC setting. According to our Medicare billing data, CPT 64640 is performed 68 percent of the time in a physician's office, so this procedure is not being added to the list. CPT 62287, which we proposed for addition to the list, will be added.

Comment: Some commenters believed that it was appropriate to add CPT codes 42415 (parotid surgery), 31254 (partial ethmoid endoscopy), 31255 (ethmoid endoscopy), 31256 (nasal endoscopy with antrostomy), 31267 (nasal endoscopy with maxillary endoscopy), and 31276 (nasal endoscopy with frontal endoscopy) to the list. The commenters asserted that all of these procedures are suitable and routinely performed in an ASC setting.

Response: After review by clinical staff, we agree with the commenter and we are adding CPT code 42415 to the list. CPT codes 31254, 31255, 31256, 31267 and 31276 are currently on the ASC list and will remain on the list.

Comment: We received comments stating that certain laproscopic procedures should be added to the ASC list. They are: CPT codes 56340, 56341 and 56342 (laparoscopic cholecystectomy with and without cholangiography and common duct exploration) and CPT code 56348 (laparoscopic assisted vaginal hysterectomy). Commenters stated these procedures are routinely performed in an outpatient setting and would be appropriate for an ASC.

Response: Our medical staff determined that these procedures may be appropriately performed in an ASC for many non-Medicare beneficiaries in the 65-and-under age group. However, these procedures often involve an overnight stay for Medicare beneficiaries and they do not conform to our standard for ASC procedures in § 416.65(b)(ii). Therefore, we are not adding them to the ASC list.

Comment: Some commenters wrote that we should retain the following procedures proposed for deletion: CPT codes 51726 (Complex cystometrogram), 51772 (Urethra pressure profile), 51785 (Anal/urinary pressure study), 50392 (Insert kidney drain), 50393 (Insert ureteral tube), 50395 (Create passage for

kidney), 50684 (Injection for ureter x-ray), 50690 (Injection for ureter x-ray), 51600 (Injection for bladder x-ray), 51605 (Preparation for bladder x-ray), and 51610 (Injection for bladder x-ray).

Response: Our medical staff reviewed these codes in light of the commenters' arguments against deleting them, and we agree that CPT codes 51726, 51772, 51785, 50392, 50393, and 50395 should be retained on the ASC list. CPT codes 50684, 50690, 51600, 51605, and 51610 are services that involve injections, which are packaged into imaging procedures that are not payable in an ASC, and we are making final their deletion from the ASC list.

Comment: Some of the same commenters also agreed with our proposal to delete CPT code 51725, Simple Cystometrogram and not add to the list CPT codes 51736 Simple Uroflowmetry and 51741 Complex Uroflowmetry.

Response: In the absence of disagreement from commenters, we are making our proposal regarding these codes final.

Comment: Another commenter recommended that we not remove the following CPT codes from the list: 50970, 50972, 50974, 50976, 50978, and 50980, all of which are ureteral endoscopy codes.

Response: We reviewed these procedures and we agree with the commenter that they are appropriate to the ASC setting and consistent with our criteria for the ASC list. Therefore, we are not removing these codes from the list.

Comment: A few commenters wanted us not to delete CPT codes 51005 (Aspiration of bladder) and 51010 (Aspiration of bladder). These commenters also wanted us to add the following codes to the ASC list: 54450 (Foreskin manipulation), 51000 (Aspiration bladder), 53600 (Dilate urethral stricture), 53601 (Dilate urethral stricture), 53621 (Dilate urethral stricture), 53660 (Dilation female urethra), 53661 (Subsequent dilation female urethra), 53675 (Catheterization, complicated), and 54200 (Injection procedure, Peyronie).

Response: We reviewed our utilization data and agree with the commenters that CPT code 51010 should remain on the ASC list. With the exception of CPT code 53675, all of the other procedures recommended by the commenters are performed more than 50 percent of the time in physicians' offices, some as frequently as 99 percent of the reported cases. Therefore, we are not adding these procedures to the list consistent with our current regulation at § 416.65(a)(2), which requires that the

ASC list not include procedures that are commonly performed or that may be safely performed in physicians' offices. CPT code 53675, Complex catheterization, would be significantly overpaid in the lowest ASC payment group. Therefore, we are not adding this procedure to the list.

Comment: A few commenters opposed our proposal to remove the following codes from the ASC list: CPT codes 50520 (Closure of nephrocuteaneous fistula), 50570 (Renal endoscopy), 50572 (Renal endoscopy), 50574 (Renal endoscopy), 50576 (Renal endoscopy), 50578 (Renal endoscopy), and 50580 (Renal endoscopy).

Response: These codes describe procedures that are not consistent with our criteria in section § 416.65(b)(3) and therefore are not appropriate to be performed in an ASC. Therefore, we are making our proposal final and we are deleting these codes from the list.

Comment: In our proposed rule we proposed to delete the following nerve injection CPT codes: 64410, 64415, 64417, 64420, 64421, 64430, 64442, 64443, 64510, 64520, 64530, 64600, 64605, 64610, 64620, 64622, 64623, 64630, and 64680. These proposed deletions prompted numerous comments from ASCs specializing in pain management and from interventional pain physicians. Commenters argued that concerns about patient safety supported retaining these nerve block injection codes on the ASC list. They stated that the minimally acceptable requirements for safe completion of these procedures include continuous monitoring of heart function, lung function and breathing. The placement of injections in the spinal area requires the highest infection control standards. In addition, fluoroscopic guidance is necessary to assure precise needle placement. Injections can provoke severe hypertension, chest pain, cardiac arrhythmias, myocardial infarction, severe pain and vasovagal reactions. Risks include seizures, respiratory and cardiac arrest, hypotension, respiratory depression, pneumothorax, total spinal anesthesia, infection, local anesthetic toxicity, paralysis and death. Commenters argued that because of the risks associated with these procedures, they require the health and safety protections assured by the conditions for coverage of ASC services found in part 416 of the regulations.

A few commenters supported deletion of the nerve injection codes from the ASC list. These commenters stated that they are able to perform these nerve injections in their offices. However, these commenters also stated that they

operate in environments with resuscitation facilities and radiological guidance, more typically found in an ASC or a hospital outpatient setting than in a physician's office.

Response: The preponderance of comments opposing deletion of these codes from the ASC list stressed that assuring patient safety requires monitoring and special equipment not customarily found in the physician office setting. Even the minority supporting deletion noted the need for special safety measures in their comments. In light of these comments, we have retained these procedures on the ASC list (with the exception of CPT codes 64442 and 64443, which have been deleted by CPT) because as required by the conditions for coverage in §§ 416.41 and 416.44, ASCs are specifically equipped to provide the level of patient care and monitoring needed to ensure patient health and safety when these procedures are performed. In addition, ASCs are required to have in place appropriate procedures to address emergencies should they occur.

IV. Provisions of the Final Regulations

This final rule with comment period makes additions to and deletions from the current list of Medicare approved ASC procedures. In addition, this final rule with comment period responds to comments received from the June 12, 1998 proposed rule (63 FR 32290) that addressed proposed additions to and deletions from the list of ASC approved procedures. This final rule with comment period implements requirements of section 1833(i)(1) and (2) of the Act.

The addendum that follows this preamble contains the complete list of surgical procedures that are approved for an ASC facility fee payment effective for services furnished on or after July 1, 2003. The addendum also designates those CPT codes that are additions to or deletions from the current ASC list. The CPT code for each procedure is listed in column 1. In column 2, the letter "A" indicates a code that is being added to the ASC in this final rule. The letter "A*" (with an asterisk) indicates a code added to CPT since 1998 that we are adding to the list but that we did not propose to add in the June 1998 proposed rule. CPT codes designated with "A*" are those for which we are soliciting comments. The letter "D" in column 2 indicates a code that is being deleted from the ASC list. Column 3 provides the short descriptor for the CPT code in column 1. Column 4 indicates the current payment group to which an approved code is assigned.

Column 5 indicates the FY 2003 payment amount for the assigned payment group. We solicit comments on additions to the ASC list designated with "A*" in column 2 and the payment group to which these additions are assigned. The codes designated by "A*" in column 2 are new CPT codes that were added to CPT in 1999, 2000, 2001, 2002, and 2003 that are similar to procedures on the updated ASC list.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Waiver of Proposed Rulemaking

We ordinarily publish a proposed notice in the **Federal Register** and invite public comment when we add to the ASC list HCPCS codes that describe new surgical procedures. The proposed notice includes a reference to the legal authority under which the additions to the list are proposed and a description of the subjects and issues involved. We solicit comment both on the appropriateness of performing the new procedures in an ASC and the payment rate that we propose as the ASC facility fee for the new procedures. This process can be waived, however, if the agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule that is issued.

For reasons that we explain elsewhere in this preamble, we have not previously issued a rule to make final the additions and deletions proposed in the June 12, 1998 proposed rule. For the same reasons, we have not issued proposed notices regarding the addition to the ASC list of new CPT codes that were created during the years since publication of the June 12 proposed rule. This final rule with comment adopts some provisions set forth in the June 12, 1998 proposed rule (63 FR 32290). In this final rule with comment, we are also making certain additions to the ASC list that were not proposed in the June 12 rule and that are subject to comment. Specifically, we are adding new CPT codes for surgical procedures that were added to CPT in 1999, 2000, 2001, 2002, and 2003, and we are assigning those codes to an existing ASC payment group.

We are making the addition of these new CPT codes to the ASC list effective for services furnished on or after July 1, 2003 because we believe that were we not to add them in this final rule, we would limit beneficiary access to surgical procedures that can be appropriately performed in the ASC setting. If these codes are not payable under the ASC benefit, beneficiaries are limited to receiving the services that they describe in a hospital setting. Also, ASCs cannot receive a facility fee for these services under the Medicare ASC benefit if we do not add them to the list. Therefore, delay in adding these new surgical procedures to the ASC list is contrary to the public interest.

Also, it is impracticable not to add the applicable new CPT codes created from 1999 through 2003 until after we have received public comments, analyzed those comments, and issued a final rule. To do so could mean that the new CPT codes would not be made final under the ASC benefit until 2004, at the earliest.

For these reasons, we find good cause to waive the notice of proposed rulemaking and to issue this final rule with comment. We are providing a 60-day public comment period regarding the addition of the new CPT codes, designated by an "A*" in the addendum and the payment group to which these codes are assigned. We will respond to timely comments in the next final notice or final rule that we issue regarding the ASC benefit.

VII. Regulatory Impact Statement

A. Overall Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96-354), Section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). Our Office of the Actuary has prepared a fiscal impact estimate. As shown in the table below, for fiscal years 2003 through 2007, the cost to the Medicare program is estimated to be \$5

million per year. Therefore, this is not considered a major rule.

Fiscal year	Cost ¹
2003	\$5
2004	5
2005	5
2006	5
2007	5

¹ Cost in millions, rounded to the nearest 5 million.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 to \$29 million in any 1 year. According to the small business associations, approximately 73 percent of all ASCs are considered small entities by having revenues of \$11.5 million or less. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This rule does not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million. This rule will not have an effect on the governments mentioned and the private sector costs will be less than the \$110 threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial effect on State or local governments.

B. Anticipated Effects

The entities affected by this final rule with comment period are Medicare certified ASCs and beneficiaries. No

other providers are affected. This rule will not affect state or local governments or the private sector other than ASCs. There are more than 3,000 ASCs currently certified by Medicare, nearly three-quarters of which fit the definition of a "small entity."

The result of this rule is to increase the number of ASC procedures approved for Medicare payment by approximately 300, thereby making more surgical services payable by Medicare in an ASC available to beneficiaries. ASCs will benefit from our expanding the list of Medicare approved ASC procedures because the number of services for which Medicare will pay a facility fee will increase as a result. Currently, if ASCs perform these procedures, Medicare does not allow payment of a facility fee. Our adding these codes to the ASC list also enables ASCs to serve a greater number of beneficiaries by being able to offer access to an increased number of surgical services. The number of claims for ASC services would increase. No specific provisions of this final rule have yet been implemented. If this final rule is not issued, beneficiaries would be denied access to approximately 300 surgical procedures in the ASC setting and this would limit beneficiary choice.

Some individuals have advocated the elimination of the ASC list on the basis that the decision regarding where to perform a procedure rests ultimately with the physician. These same individuals support payment of an ASC facility fee for any surgical procedure covered by Medicare in a clinic or hospital outpatient setting. The requirements for an ASC list are imposed by the statute, so we cannot adopt this recommendation.

ASCs that specialize in dermatology, gastroenterology, and orthopedics may object to our not adding certain procedures that we proposed in our June 1998 proposed rule. In particular, we are not adding procedures performed more than 50 percent of the time in a physician's office, procedures that are not appropriately or safely performed in an ambulatory setting, or procedures that would otherwise have met the criteria for inclusion on the ASC list except that they would be significantly overpaid in the lowest ASC payment group. We have determined that the adverse economic impact on the Medicare program that could result from a shift of such services to an ASC setting outweighs the potential negative reaction of these medical specialties.

ASCs that furnish extracorporeal shockwave lithotripsy (ESWL) services may also object to our not adding this procedure to the ASC list. However, as

we explained above, because we are not updating the ASC payment rates and ratesetting methodology in this final rule, we would not be in compliance with the District Court order issued in *American Lithotripsy Society v. Sullivan*, 785, F. Supp. 1035 (D.D.C. 1992) if we were to add ESWL to the ASC list without further data and information. Overall, we believe the increased beneficiary access to surgical services and the expansion of the ASC list that will result from this final rule outweighs potential objections to our not including certain additions that were proposed in 1998 to the ASC list.

For the above reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

C. Alternatives Considered

As stated above, we are issuing this final rule with comment to implement additions to and deletions from the ASC list proposed in the June 1998 proposed rule. However, we are not implementing the ratesetting method, rebased payment rates, and changes in the regulations that were also proposed in the June 1998 proposed rule. We considered not updating the ASC list until we completed a survey of ASC costs to use in rebasing the ASC payment rates. However, we decided against this approach because it could have resulted in delaying the update of the list for several years while we conducted the survey and audited and compiled the data upon which to rebase the rates.

We considered basing payment rates for procedures being added to the ASC list in this final rule on the ASC payment group that most closely approximated the payment amount for the same procedures under the hospital outpatient prospective payment system (OPPS). However, the statute requires

that payment rates be tied to ASC, not hospital outpatient costs, so we decided, as explained previously in this preamble, to match the additions to the list to procedures already on the list that are similar in terms of clinical work and resource inputs and to assign the new code to the same payment group as the current code. This approach better maintains internal consistency in ASC payment rates among codes on the list that are similar.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)
Dated: October 16, 2002.

Thomas A. Scully,
Administrator, Centers for Medicare and Medicaid Services.

Approved: February 14, 2003.

Tommy G. Thompson,
Secretary.

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
10121	A	Remove foreign body	2	446
10180		Complex drainage, wound	2	446
11010	A	Debride skin, fx	2	446
11011	A	Debride skin/muscle, fx	2	446
11012	A	Debride skin/muscle/bone, fx	2	446
11042		Debride skin/tissue	2	446
11043		Debride tissue/muscle	2	446
11044		Debride tissue/muscle/bone	2	446
11404		Removal of skin lesion	1	333
11406		Removal of skin lesion	2	446
11424		Removal of skin lesion	2	446
11426		Removal of skin lesion	2	446
11444		Removal of skin lesion	1	333
11446		Removal of skin lesion	2	446
11450		Removal, sweat gland lesion	2	446
11451		Removal, sweat gland lesion	2	446
11462		Removal, sweat gland lesion	2	446
11463		Removal, sweat gland lesion	2	446
11470		Removal, sweat gland lesion	2	446
11471		Removal, sweat gland lesion	2	446
11604		Removal of skin lesion	2	446
11606		Removal of skin lesion	2	446
11624		Removal of skin lesion	2	446
11626		Removal of skin lesion	2	446
11644		Removal of skin lesion	2	446
11646		Removal of skin lesion	2	446
11770		Removal of pilonidal lesion	3	510
11771		Removal of pilonidal lesion	3	510
11772		Removal of pilonidal lesion	3	510
11960		Insert tissue expander(s)	2	446
11970		Replace tissue expander	3	510
11971		Remove tissue expander(s)	1	333
12005		Repair superficial wound(s)	2	446
12006		Repair superficial wound(s)	2	446
12007		Repair superficial wound(s)	2	446
12016		Repair superficial wound(s)	2	446
12017		Repair superficial wound(s)	2	446
12018		Repair superficial wound(s)	2	446
12020		Closure of split wound	1	333
12021		Closure of split wound	1	333
12034		Layer closure of wound(s)	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
12035		Layer closure of wound(s)	2	446
12036		Layer closure of wound(s)	2	446
12037		Layer closure of wound(s)	2	446
12044		Layer closure of wound(s)	2	446
12045		Layer closure of wound(s)	2	446
12046		Layer closure of wound(s)	2	446
12047		Layer closure of wound(s)	2	446
12054		Layer closure of wound(s)	2	446
12055		Layer closure of wound(s)	2	446
12056		Layer closure of wound(s)	2	446
12057		Layer closure of wound(s)	2	446
13100		Repair of wound or lesion	2	446
13101		Repair of wound or lesion	3	510
13120		Repair of wound or lesion	2	446
13121		Repair of wound or lesion	3	510
13131		Repair of wound or lesion	2	446
13132		Repair of wound or lesion	3	510
13150		Repair of wound or lesion	3	510
13151		Repair of wound or lesion	3	510
13152		Repair of wound or lesion	3	510
13160		Late closure of wound	2	446
14000		Skin tissue rearrangement	2	446
14001		Skin tissue rearrangement	3	510
14020		Skin tissue rearrangement	3	510
14021		Skin tissue rearrangement	3	510
14040		Skin tissue rearrangement	2	446
14041		Skin tissue rearrangement	3	510
14060		Skin tissue rearrangement	3	510
14061		Skin tissue rearrangement	3	510
14300		Skin tissue rearrangement	4	630
14350		Skin tissue rearrangement	3	510
15000		Skin graft	2	446
15050		Skin pinch graft	2	446
15100		Skin split graft	2	446
15101		Skin split graft add-on	3	510
15120		Skin split graft	2	446
15121		Skin split graft add-on	3	510
15200		Skin full graft	3	510
15201		Skin full graft add-on	2	446
15220		Skin full graft	2	446
15221		Skin full graft add-on	2	446
15240		Skin full graft	3	510
15241		Skin full graft add-on	3	510
15260		Skin full graft	2	446
15261		Skin full graft add-on	2	446
15350		Skin homograft	2	446
15351	A*	Skin homograft add-on	2	446
15400		Skin heterograft	2	446
15401	A*	Skin heterograft add-on	2	446
15570		Form Skin pedicle flap	3	510
15572		Form Skin pedicle flap	3	510
15574		Form Skin pedicle flap	3	510
15576		Form Skin pedicle flap	3	510
15600		Skin graft	3	510
15610		Skin graft	3	510
15620		Skin graft	4	630
15630		Skin graft	3	510
15650		Transfer skin pedicle flap	5	717
15732		Muscle-skin graft, head/neck	3	510
15734		Muscle-skin graft, trunk	3	510
15736		Muscle-skin graft, arm	3	510
15738		Muscle-skin graft, leg	3	510
15740		Island pedicle flap graft	2	446
15750		Neurovascular pedicle graft	2	446
15756	D	Free muscle flap, microvasc	3	510
15757	D	Free skin flap, microvasc	3	510
15758	D	Free fascial flap, microvasc	3	510
15760		Composite skin graft	2	446
15770		Derma-fat-fascia graft	3	510
15775	A	Hair transplant punch grafts	3	510
15776	A	Hair transplant punch grafts	3	510
15820	A	Revision of lower eyelid	3	510

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
15821	A	Revision of lower eyelid	3	510
15822	A	Revision of upper eyelid	3	510
15823	A	Revision of upper eyelid	5	717
15824	A	Removal of forehead wrinkles	3	510
15825	A	Removal of neck wrinkles	3	510
15826	A	Removal of brow wrinkles	3	510
15828	A	Removal of face wrinkles	3	510
15829	A	Removal of skin wrinkles	5	717
15831	A	Excise excessive skin tissue	3	510
15832	A	Excise excessive skin tissue	3	510
15833	A	Excise excessive skin tissue	3	510
15834	A	Excise excessive skin tissue	3	510
15835	A	Excise excessive skin tissue	3	510
15840		Graft for face nerve palsy	4	630
15841		Graft for face nerve palsy	4	630
15842	D	Flap for face nerve palsy	4	630
15845		Skin and muscle repair, face	4	630
15876	A	Suction assisted lipectomy	3	510
15877	A	Suction assisted lipectomy	3	510
15878	A	Suction assisted lipectomy	3	510
15879	A	Suction assisted lipectomy	3	510
15920		Removal of tail bone ulcer	3	510
15922		Removal of tail bone ulcer	4	630
15931		Remove sacrum pressure sore	3	510
15933		Remove sacrum pressure sore	3	510
15934		Remove sacrum pressure sore	3	510
15935		Remove sacrum pressure sore	4	630
15936		Remove sacrum pressure sore	4	630
15937		Remove sacrum pressure sore	4	630
15940		Remove hip pressure sore	3	510
15941		Remove hip pressure sore	3	510
15944		Remove hip pressure sore	3	510
15945		Remove hip pressure sore	4	630
15946		Remove hip pressure sore	4	630
15950		Remove thigh pressure sore	3	510
15951		Remove thigh pressure sore	4	630
15952		Remove thigh pressure sore	3	510
15953		Remove thigh pressure sore	4	630
15956		Remove thigh pressure sore	3	510
15958		Remove thigh pressure sore	4	630
16015		Treatment of burn(s)	2	446
16030	D	Treatment of burn(s)	1	333
16035	D	Incision of burn scab, initi	2	446
19020		Incision of breast lesion	2	446
19100		Bx breast percut w/o image	1	333
19101		Biopsy of breast, open	2	446
19102		Bx breast percut w/image	2	446
19103		Bx breast percut w/device	2	446
19110		Nipple exploration	2	446
19112		Excise breast duct fistula	3	510
19120		Removal of breast lesion	3	510
19125		Excision, breast lesion	3	510
19126		Excision, addl breast lesion	3	510
19140		Removal of breast tissue	4	630
19160		Removal of breast tissue	3	510
19162		Remove breast tissue, nodes	7	995
19180		Removal of breast	4	630
19182		Removal of breast	4	630
19260	D	Removal of chest wall lesion	5	717
19290		Place needle wire, breast	1	333
19291		Place needle wire, breast	1	333
19316	A	Suspension of breast	4	630
19318		Reduction of large breast	4	630
19324	A	Enlarge breast	4	630
19325	A	Enlarge breast with implant	9	1339
19328		Removal of breast implant	1	333
19330		Removal of implant material	1	333
19340		Immediate breast prosthesis	2	446
19342		Delayed breast prosthesis	3	510
19350		Breast reconstruction	4	630
19355	A	Correct inverted nipple(s)	4	630
19357		Breast reconstruction	5	717

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
19364	D	Breast reconstruction	5	717
19366		Breast reconstruction	5	717
19370		Surgery of breast capsule	4	630
19371		Removal of breast capsule	4	630
19380		Revise breast reconstruction	5	717
20005		Incision of deep abscess	2	446
20200		Muscle biopsy	2	446
20205		Deep muscle biopsy	3	510
20206		Needle biopsy, muscle	1	333
20220		Bone biopsy, trocar/needle	1	333
20225		Bone biopsy, trocar/needle	2	446
20240		Bone biopsy, excisional	2	446
20245		Bone biopsy, excisional	3	510
20250		Open bone biopsy	3	510
20251		Open bone biopsy	3	510
20525		Removal of foreign body	3	510
20650		Insert and remove bone pin	3	510
20660	D	Apply, remove fixation device	2	446
20661	D	Application of head brace	3	510
20662	D	Application of pelvis brace	3	510
20663	D	Application of thigh brace	3	510
20665	D	Removal of fixation device	1	333
20670		Removal of support implant	1	333
20680		Removal of support implant	3	510
20690		Apply bone fixation device	2	446
20692	A	Apply bone fixation device	3	510
20693	A	Adjust bone fixation device	3	510
20694		Remove bone fixation device	1	333
20900		Removal of bone for graft	3	510
20902		Removal of bone for graft	4	630
20910		Remove cartilage for graft	3	510
20912		Remove cartilage for graft	3	510
20920		Removal of fascia for graft	4	630
20922		Removal of fascia for graft	3	510
20924		Removal of tendon for graft	4	630
20926		Removal of tissue for graft	4	630
20955	D	Fibula bone graft, microvasc	4	630
20962	D	Other bone graft, microvasc	4	630
20969	D	Bone/skin graft, microvasc	4	630
20970	D	Bone/skin graft, iliac crest	4	630
20972	D	Bone/skin graft, metatarsal	4	630
20973	D	Bone/skin graft, great toe	4	630
20975		Electrical bone stimulation	2	446
21010		Incision of jaw joint	2	446
21015	A	Resection of facial tumor	3	510
21025		Excision of bone, lower jaw	2	446
21026		Excision of facial bone(s)	2	446
21029	A	Contour of face bone lesion	2	446
21034		Removal of face bone lesion	3	510
21040		Removal of jaw bone lesion	2	446
21041	D	Removal of jaw bone lesion	2	446
21044		Removal of jaw bone lesion	2	446
21046	A	Excision, benign tumor, mandible	2	446
21047	A	Excision, benign tumor, mandible	2	446
21050		Removal of jaw joint	3	510
21060		Remove jaw joint cartilage	2	446
21070		Remove coronoid process	3	510
21100		Maxillofacial fixation	2	446
21121	A	Reconstruction of chin	7	995
21122	A	Reconstruction of chin	7	995
21123	A	Reconstruction of chin	7	995
21127	A	Augmentation, lower jaw bone	9	1339
21181	A	Contour cranial bone lesion	7	995
21206		Reconstruct upper jaw bone	5	717
21208		Augmentation of facial bones	7	995
21209		Reduction of facial bones	5	717
21210		Face bone graft	7	995
21215		Lower jaw bone graft	7	995
21230		Rib cartilage graft	7	995
21235		Ear cartilage graft	7	995
21240		Reconstruction of jaw joint	4	630
21242		Reconstruction of jaw joint	5	717

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
21243		Reconstruction of jaw joint	5	717
21244		Reconstruction of lower jaw	7	995
21245		Reconstruction of jaw	7	995
21246		Reconstruction of jaw	7	995
21248		Reconstruction of jaw	7	995
21249		Reconstruction of jaw	7	995
21267		Revise eye sockets	7	995
21270		Augmentation, cheek bone	5	717
21275		Revision, orbitofacial bones	7	995
21280		Revision of eyelid	5	717
21282		Revision of eyelid	5	717
21295	A	Reconst lwr jaw w/o fixation	1	333
21296	A	Reconst lwr jaw w/fixation	1	333
21300		Treatment of skull fracture	2	446
21310		Treatment of nose fracture	2	446
21315		Treatment of nose fracture	2	446
21320		Treatment of nose fracture	2	446
21325		Treatment of nose fracture	4	630
21330		Treatment of nose fracture	5	717
21335		Treatment of nose fracture	7	995
21336	A	Treat nasal septal fracture	4	630
21337		Treat nasal septal fracture	2	446
21338		Treat nasoethmoid fracture	4	630
21339		Treat nasoethmoid fracture	5	717
21340		Treatment of nose fracture	4	630
21343	D	Treatment of sinus fracture	5	717
21345	A	Treat nose/jaw fracture	7	995
21355		Treat cheek bone fracture	3	510
21360	D	Treat cheek bone fracture	4	630
21365		Treat cheek bone fracture	5	717
21385	D	Treat eye socket fracture	5	717
21386	D	Treat eye socket fracture	5	717
21387	D	Treat eye socket fracture	5	717
21390	D	Treat eye socket fracture	7	995
21395	D	Treat eye socket fracture	7	995
21400		Treat eye socket fracture	2	446
21401		Treat eye socket fracture	3	510
21406	D	Treat eye socket fracture	4	630
21407	D	Treat eye socket fracture	5	717
21421		Treat mouth roof fracture	4	630
21422	D	Treat mouth roof fracture	5	717
21440		Treat dental ridge fracture	3	510
21445		Treat dental ridge fracture	4	630
21450		Treat lower jaw fracture	3	510
21451		Treat lower jaw fracture	4	630
21452		Treat lower jaw fracture	2	446
21453		Treat lower jaw fracture	3	510
21454		Treat lower jaw fracture	5	717
21461		Treat lower jaw fracture	4	630
21462		Treat lower jaw fracture	5	717
21465		Treat lower jaw fracture	4	630
21470	D	Treat lower jaw fracture	5	717
21480		Reset dislocated jaw	1	333
21485		Reset dislocated jaw	2	446
21490		Repair dislocated jaw	3	510
21493		Treat hyoid bone fracture	3	510
21494		Treat hyoid bone fracture	4	630
21495	D	Treat hyoid bone fracture	4	630
21497		Interdental wiring	2	446
21501		Drain neck/chest lesion	2	446
21502		Drain chest lesion	2	446
21510	D	Drainage of bone lesion	3	510
21550	D	Biopsy of neck/chest	1	333
21555		Remove lesion, neck/chest	2	446
21556		Remove lesion, neck/chest	2	446
21600		Partial removal of rib	2	446
21610		Partial removal of rib	2	446
21620	D	Partial removal of sternum	2	446
21700		Revision of neck muscle	2	446
21720		Revision of neck muscle	3	510
21725		Revision of neck muscle	3	510
21800		Treatment of rib fracture	1	333

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
21805		Treatment of rib fracture	2	446
21810	D	Treatment of rib fracture(s)	2	446
21820		Treat sternum fracture	1	333
21920	D	Biopsy soft tissue of back	1	333
21925		Biopsy soft tissue of back	2	446
21930		Remove lesion, back or flank	2	446
21935		Remove tumor, back	3	510
22100	D	Remove part of neck vertebra	3	510
22101	D	Remove part, thorax vertebra	3	510
22102	D	Remove part, lumbar vertebra	3	510
22103	D	Remove extra spine segment	3	510
22305		Treat spine process fracture	1	333
22310		Treat spine fracture	1	333
22315		Treat spine fracture	2	446
22325	D	Treat spine fracture	3	510
22326	D	Treat neck spine fracture	3	510
22327	D	Treat thorax spine fracture	3	510
22328	D	Treat each add spine fx	3	510
22505		Manipulation of spine	2	446
22900		Remove abdominal wall lesion	4	630
23000		Removal of calcium deposits	2	446
23020		Release shoulder joint	2	446
23030		Drain shoulder lesion	1	333
23031	A	Drain shoulder bursa	3	510
23035		Drain shoulder bone lesion	3	510
23040		Exploratory shoulder surgery	3	510
23044		Exploratory shoulder surgery	4	630
23065	D	Biopsy shoulder tissues	1	333
23066		Biopsy shoulder tissues	2	446
23075		Removal of shoulder lesion	2	446
23076		Removal of shoulder lesion	2	446
23077		Remove tumor of shoulder	3	510
23100		Biopsy of shoulder joint	2	446
23101		Shoulder joint surgery	7	995
23105		Remove shoulder joint lining	4	630
23106		Incision of collarbone joint	4	630
23107		Explore treat shoulder joint	4	630
23120		Partial removal, collar bone	5	717
23125		Removal of collar bone	5	717
23130		Remove shoulder bone, part	5	717
23140		Removal of bone lesion	4	630
23145		Removal of bone lesion	5	717
23146		Removal of bone lesion	5	717
23150		Removal of humerus lesion	4	630
23155		Removal of humerus lesion	5	717
23156		Removal of humerus lesion	5	717
23170		Remove collar bone lesion	2	446
23172		Remove shoulder blade lesion	2	446
23174		Remove humerus lesion	2	446
23180		Remove collar bone lesion	4	630
23182		Remove shoulder blade lesion	4	630
23184		Remove humerus lesion	4	630
23190		Partial removal of scapula	4	630
23195		Removal of head of humerus	5	717
23330		Remove shoulder foreign body	1	333
23331		Remove shoulder foreign body	1	333
23395		Muscle transfer, shoulder/arm	5	717
23397		Muscle transfers	7	995
23400		Fixation of shoulder blade	7	995
23405		Incision of tendon & muscle	2	446
23406		Incise tendon(s) & muscle(s)	2	446
23410		Repair of tendon(s)	5	717
23412		Repair of tendon(s)	7	995
23415		Release of shoulder ligament	5	717
23420		Repair of shoulder	7	995
23430		Repair biceps tendon	4	630
23440		Remove/transplant tendon	4	630
23450		Repair shoulder capsule	5	717
23455		Repair shoulder capsule	7	995
23460		Repair shoulder capsule	5	717
23462		Repair shoulder capsule	7	995
23465		Repair shoulder capsule	5	717

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
23466		Repair shoulder capsule	7	995
23480		Revision of collar bone	4	630
23485		Revision of collar bone	7	995
23490		Reinforce clavicle	3	510
23491		Reinforce shoulder bones	3	510
23500		Treat clavicle fracture	1	333
23505		Treat clavicle fracture	1	333
23515		Treat clavicle fracture	3	510
23520		Treat clavicle dislocation	1	333
23525		Treat clavicle dislocation	1	333
23530		Treat clavicle dislocation	3	510
23532		Treat clavicle dislocation	4	630
23540		Treat clavicle dislocation	1	333
23545		Treat clavicle dislocation	1	333
23550		Treat clavicle dislocation	3	510
23552		Treat clavicle dislocation	4	630
23570		Treat shoulder blade fx	1	333
23575		Treat shoulder blade fx	1	333
23585		Treat scapula fracture	3	510
23600		Treat humerus fracture	1	333
23605		Treat humerus fracture	2	446
23615		Treat humerus fracture	4	630
23616		Treat humerus fracture	4	630
23620		Treat humerus fracture	1	333
23625		Treat humerus fracture	2	446
23630		Treat humerus fracture	5	717
23650		Treat shoulder dislocation	1	333
23655		Treat shoulder dislocation	1	333
23660		Treat shoulder dislocation	3	510
23665		Treat dislocation/fracture	2	446
23670		Treat dislocation/fracture	3	510
23675		Treat dislocation/fracture	2	446
23680		Treat dislocation/fracture	3	510
23700		Fixation of shoulder	1	333
23800		Fusion of shoulder joint	4	630
23802		Fusion of shoulder joint	7	995
23921		Amputation follow-up surgery	3	510
23930		Drainage of arm lesion	1	333
23931		Drainage of arm bursa	2	446
23935		Drain arm/elbow bone lesion	2	446
24000		Exploratory elbow surgery	4	630
24006	A	Release elbow joint	4	630
24065	D	Biopsy arm/elbow soft tissue	1	333
24066		Biopsy arm/elbow soft tissue	2	446
24075		Remove arm/elbow lesion	2	446
24076		Remove arm/elbow lesion	2	446
24077		Remove tumor of arm/elbow	3	510
24100		Biopsy elbow joint lining	1	333
24101		Explore/treat elbow joint	4	630
24102		Remove elbow joint lining	4	630
24105		Removal of elbow bursa	3	510
24110		Remove humerus lesion	2	446
24115		Remove/graft bone lesion	3	510
24116		Remove/graft bone lesion	3	510
24120		Remove elbow lesion	3	510
24125		Remove/graft bone lesion	3	510
24126		Remove/graft bone lesion	3	510
24130		Removal of head of radius	3	510
24134		Removal of arm bone lesion	2	446
24136		Remove radius bone lesion	2	446
24138		Remove elbow bone lesion	2	446
24140		Partial removal of arm bone	3	510
24145		Partial removal of radius	3	510
24147		Partial removal of elbow	2	446
24150	D	Extensive humerus surgery	3	510
24151	D	Extensive humerus surgery	4	630
24152	D	Extensive radius surgery	3	510
24153	D	Extensive radius surgery	4	630
24155		Removal of elbow joint	3	510
24160		Remove elbow joint implant	2	446
24164		Remove radius head implant	3	510
24201		Removal of arm foreign body	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
24301		Muscle/tendon transfer	4	630
24305	A	Arm tendon lengthening	4	630
24310		Revision of arm tendon	3	510
24320		Repair of arm tendon	3	510
24330		Revision of arm muscles	3	510
24331		Revision of arm muscles	3	510
24340		Repair of biceps tendon	3	510
24341	A	Repair arm tendon/muscle	3	510
24342		Repair of ruptured tendon	3	510
24345	A*	Repr elbw med ligmnt w/tissu	2	446
24350		Repair of tennis elbow	3	510
24351		Repair of tennis elbow	3	510
24352		Repair of tennis elbow	3	510
24354		Repair of tennis elbow	3	510
24356		Revision of tennis elbow	3	510
24360		Reconstruct elbow joint	5	717
24361		Reconstruct elbow joint	5	717
24362		Reconstruct elbow joint	5	717
24363		Replace elbow joint	7	995
24365		Reconstruct head of radius	5	717
24366		Reconstruct head of radius	5	717
24400		Revision of humerus	4	630
24410		Revision of humerus	4	630
24420		Revision of humerus	3	510
24430		Repair of humerus	3	510
24435		Repair humerus with graft	4	630
24470		Revision of elbow joint	3	510
24495		Decompression of forearm	2	446
24498		Reinforce humerus	3	510
24500		Treat humerus fracture	1	333
24505		Treat humerus fracture	1	333
24515		Treat humerus fracture	4	630
24516		Treat humerus fracture	4	630
24530		Treat humerus fracture	1	333
24535		Treat humerus fracture	1	333
24538		Treat humerus fracture	2	446
24545		Treat humerus fracture	4	630
24546		Treat humerus fracture	5	717
24560		Treat humerus fracture	1	333
24565		Treat humerus fracture	2	446
24566		Treat humerus fracture	2	446
24575		Treat humerus fracture	3	510
24576		Treat humerus fracture	1	333
24577		Treat humerus fracture	1	333
24579		Treat humerus fracture	3	510
24582		Treat humerus fracture	2	446
24586		Treat elbow fracture	4	630
24587		Treat elbow fracture	5	717
24600		Treat elbow dislocation	1	333
24605		Treat elbow dislocation	2	446
24615		Treat elbow dislocation	3	510
24620		Treat elbow fracture	2	446
24635		Treat elbow fracture	3	510
24655		Treat radius fracture	1	333
24665		Treat radius fracture	4	630
24666		Treat radius fracture	4	630
24670		Treat ulnar fracture	1	333
24675		Treat ulnar fracture	1	333
24685		Treat ulnar fracture	3	510
24800		Fusion of elbow joint	4	630
24802		Fusion/graft of elbow joint	5	717
24925		Amputation follow-up surgery	3	510
25000		Incision of tendon sheath	3	510
25020		Decompress forearm 1 space	3	510
25023		Decompress forearm 1 space	3	510
25024		Decompress forearm 2 spaces	3	510
25025		Decompress forearm 2 spaces	3	510
25028		Drainage of forearm lesion	1	333
25031		Drainage of forearm bursa	2	446
25035		Treat forearm bone lesion	2	446
25040		Explore/treat wrist joint	5	717
25065	D	Biopsy forearm soft tissues	1	333

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
25066		Biopsy forearm soft tissues	2	446
25075		Remove forearm lesion subcut	2	446
25076		Remove forearm lesion deep	3	510
25077		Remove tumor, forearm/wrist	3	510
25085		Incision of wrist capsule	3	510
25100		Biopsy of wrist joint	2	446
25101		Explore/treat wrist joint	3	510
25105		Remove wrist joint lining	4	630
25107		Remove wrist joint cartilage	3	510
25110		Remove wrist tendon lesion	3	510
25111		Remove wrist tendon lesion	3	510
25112		Reremove wrist tendon lesion	4	630
25115		Remove wrist/forearm lesion	4	630
25116		Remove wrist/forearm lesion	4	630
25118		Excise wrist tendon sheath	2	446
25119		Partial removal of ulna	3	510
25120		Removal of forearm lesion	3	510
25125		Remove/graft forearm lesion	3	510
25126		Remove/graft forearm lesion	3	510
25130		Removal of wrist lesion	3	510
25135		Remove & graft wrist lesion	3	510
25136		Remove & graft wrist lesion	3	510
25145		Remove forearm bone lesion	2	446
25150		Partial removal of ulna	2	446
25151		Partial removal of radius	2	446
25170	D	Extensive forearm surgery	3	510
25210		Removal of wrist bone	3	510
25215		Removal of wrist bones	4	630
25230		Partial removal of radius	4	630
25240		Partial removal of ulna	4	630
25248		Remove forearm foreign body	2	446
25250		Removal of wrist prosthesis	1	333
25251		Removal of wrist prosthesis	1	333
25260		Repair forearm tendon/muscle	4	630
25263		Repair forearm tendon/muscle	2	446
25265		Repair forearm tendon/muscle	3	510
25270		Repair forearm tendon/muscle	4	630
25272		Repair forearm tendon/muscle	3	510
25274		Repair forearm tendon/muscle	4	630
25275		Repair forearm tendon sheath	4	630
25280		Revise wrist/forearm tendon	4	630
25290		Incise wrist/forearm tendon	3	510
25295		Release wrist/forearm tendon	3	510
25300		Fusion of tendons at wrist	3	510
25301		Fusion of tendons at wrist	3	510
25310		Transplant forearm tendon	3	510
25312		Transplant forearm tendon	4	630
25315		Revise palsy hand tendon(s)	3	510
25316		Revise palsy hand tendon(s)	3	510
25320		Repair/revise wrist joint	3	510
25332		Revise wrist joint	5	717
25335		Realignment of hand	3	510
25337	A	Reconstruct ulna/radioulnar	5	717
25350		Revision of radius	3	510
25355		Revision of radius	3	510
25360		Revision of ulna	3	510
25365		Revise radius & ulna	3	510
25370		Revise radius or ulna	3	510
25375		Revise radius & ulna	4	630
25390		Shorten radius or ulna	3	510
25391		Lengthen radius or ulna	4	630
25392		Shorten radius & ulna	3	510
25393		Lengthen radius & ulna	4	630
25400		Repair radius or ulna	3	510
25405		Repair/graft radius or ulna	4	630
25415		Repair radius & ulna	3	510
25420		Repair/graft radius & ulna	4	630
25425		Repair/graft radius or ulna	3	510
25426		Repair/graft radius & ulna	4	630
25440		Repair/graft wrist bone	4	630
25441		Reconstruct wrist joint	5	717
25442		Reconstruct wrist joint	5	717

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
25443		Reconstruct wrist joint	5	717
25444		Reconstruct wrist joint	5	717
25445		Reconstruct wrist joint	5	717
25446		Wrist replacement	7	995
25447		Repair wrist joint(s)	5	717
25449		Remove wrist joint implant	5	717
25450		Revision of wrist joint	3	510
25455		Revision of wrist joint	3	510
25490		Reinforce radius	3	510
25491		Reinforce ulna	3	510
25492		Reinforce radius and ulna	3	510
25505		Treat fracture of radius	1	333
25515		Treat fracture of radius	3	510
25520		Treat fracture of radius	1	333
25525		Treat fracture of radius	4	630
25526		Treat fracture of radius	5	717
25535		Treat fracture of ulna	1	333
25545		Treat fracture of ulna	3	510
25565		Treat fracture radius & ulna	2	446
25574		Treat fracture radius & ulna	3	510
25575		Treat fracture radius/ulna	3	510
25605		Treat fracture radius/ulna	3	510
25611		Treat fracture radius/ulna	3	510
25620		Treat fracture radius/ulna	5	717
25624		Treat wrist bone fracture	2	446
25628		Treat wrist bone fracture	3	510
25635		Treat wrist bone fracture	1	333
25645		Treat wrist bone fracture	3	510
25660		Treat wrist dislocation	1	333
25670		Treat wrist dislocation	3	510
25671		Pin radioulnar dislocation	1	333
25675		Treat wrist dislocation	1	333
25676		Treat wrist dislocation	2	446
25680		Treat wrist fracture	2	446
25685		Treat wrist fracture	3	510
25690		Treat wrist dislocation	1	333
25695		Treat wrist dislocation	2	446
25800		Fusion of wrist joint	4	630
25805		Fusion/graft of wrist joint	5	717
25810		Fusion/graft of wrist joint	5	717
25820		Fusion of hand bones	4	630
25825		Fuse hand bones with graft	5	717
25830	A	Fusion, radioulnar jnt/ulna	5	717
25907		Amputation follow-up surgery	3	510
25922		Amputate hand at wrist	3	510
25929		Amputation follow-up surgery	3	510
26011		Drainage of finger abscess	1	333
26020		Drain hand tendon sheath	2	446
26025		Drainage of palm bursa	1	333
26030		Drainage of palm bursa(s)	2	446
26034		Treat hand bone lesion	2	446
26035	D	Decompress fingers/hand	4	630
26037	D	Decompress fingers/hand	4	630
26040		Release palm contracture	4	630
26045		Release palm contracture	3	510
26055		Incise finger tendon sheath	2	446
26060		Incision of finger tendon	2	446
26070		Explore/treat hand joint	2	446
26075		Explore/treat finger joint	4	630
26080		Explore/treat finger joint	4	630
26100		Biopsy hand joint lining	2	446
26105		Biopsy finger joint lining	1	333
26110		Biopsy finger joint lining	1	333
26115		Remove hand lesion subcut	2	446
26116		Remove hand lesion, deep	2	446
26117		Remove tumor, hand/finger	3	510
26121		Release palm contracture	4	630
26123		Release palm contracture	4	630
26125		Release palm contracture	4	630
26130		Remove wrist joint lining	3	510
26135		Revise finger joint, each	4	630
26140		Revise finger joint, each	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
26145		Tendon excision, palm/finger	3	510
26160		Remove tendon sheath lesion	3	510
26170		Removal of palm tendon, each	3	510
26180		Removal of finger tendon	3	510
26185	A	Remove finger bone	4	630
26200		Remove hand bone lesion	2	446
26205		Remove/graft bone lesion	3	510
26210		Removal of finger lesion	2	446
26215		Remove/graft finger lesion	3	510
26230		Partial removal of hand bone	7	995
26235		Partial removal, finger bone	3	510
26236		Partial removal, finger bone	3	510
26250		Extensive hand surgery	3	510
26255		Extensive hand surgery	3	510
26260		Extensive finger surgery	3	510
26261		Extensive finger surgery	3	510
26262		Partial removal of finger	2	446
26320		Removal of implant from hand	2	446
26350		Repair finger/hand tendon	1	333
26352		Repair/graft hand tendon	4	630
26356		Repair finger/hand tendon	4	630
26357		Repair finger/hand tendon	4	630
26358		Repair/graft hand tendon	4	630
26370		Repair finger/hand tendon	4	630
26372		Repair/graft hand tendon	4	630
26373		Repair finger/hand tendon	3	510
26390		Revise hand/finger tendon	4	630
26392		Repair/graft hand tendon	3	510
26410		Repair hand tendon	3	510
26412		Repair/graft hand tendon	3	510
26415		Excision, hand/finger tendon	4	630
26416		Graft hand or finger tendon	3	510
26418		Repair finger tendon	4	630
26420		Repair/graft finger tendon	4	630
26426		Repair finger/hand tendon	3	510
26428		Repair/graft finger tendon	3	510
26432		Repair finger tendon	3	510
26433		Repair finger tendon	3	510
26434		Repair/graft finger tendon	3	510
26437		Realignment of tendons	3	510
26440		Release palm/finger tendon	3	510
26442		Release palm & finger tendon	3	510
26445		Release hand/finger tendon	3	510
26449		Release forearm/hand tendon	3	510
26450		Incision of palm tendon	3	510
26455		Incision of finger tendon	3	510
26460		Incise hand/finger tendon	3	510
26471		Fusion of finger tendons	2	446
26474		Fusion of finger tendons	2	446
26476		Tendon lengthening	1	333
26477		Tendon shortening	1	333
26478		Lengthening of hand tendon	1	333
26479		Shortening of hand tendon	1	333
26480		Transplant hand tendon	3	510
26483		Transplant/graft hand tendon	3	510
26485		Transplant palm tendon	2	446
26489		Transplant/graft palm tendon	3	510
26490		Revise thumb tendon	3	510
26492		Tendon transfer with graft	3	510
26494		Hand tendon/muscle transfer	3	510
26496		Revise thumb tendon	3	510
26497		Finger tendon transfer	3	510
26498		Finger tendon transfer	4	630
26499		Revision of finger	3	510
26500		Hand tendon reconstruction	4	630
26502		Hand tendon reconstruction	4	630
26504		Hand tendon reconstruction	4	630
26508		Release thumb contracture	3	510
26510		Thumb tendon transfer	3	510
26516		Fusion of knuckle joint	1	333
26517		Fusion of knuckle joints	3	510
26518		Fusion of knuckle joints	3	510

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
26520		Release knuckle contracture	3	510
26525		Release finger contracture	3	510
26530		Revise knuckle joint	3	510
26531		Revise knuckle with implant	7	995
26535		Revise finger joint	5	717
26536		Revise/implant finger joint	5	717
26540		Repair hand joint	4	630
26541		Repair hand joint with graft	7	995
26542		Repair hand joint with graft	4	630
26545		Reconstruct finger joint	4	630
26546	A	Repair nonunion hand	4	630
26548		Reconstruct finger joint	4	630
26550		Construct thumb replacement	2	446
26551	D	Great toe-hand transfer	4	630
26553	D	Single transfer, toe-hand	2	446
26554	D	Double transfer, toe-hand	2	446
26555		Positional change of finger	3	510
26560		Repair of web finger	2	446
26561		Repair of web finger	3	510
26562		Repair of web finger	4	630
26565		Correct metacarpal flaw	5	717
26567		Correct finger deformity	5	717
26568		Lengthen metacarpal/finger	3	510
26580		Repair hand deformity	5	717
26587		Reconstruct extra finger	5	717
26590		Repair finger deformity	5	717
26591		Repair muscles of hand	3	510
26593		Release muscles of hand	3	510
26596		Excision constricting tissue	2	446
26605		Treat metacarpal fracture	2	446
26607		Treat metacarpal fracture	2	446
26608	A	Treat metacarpal fracture	4	630
26615		Treat metacarpal fracture	4	630
26645		Treat thumb fracture	1	333
26650		Treat thumb fracture	2	446
26665		Treat thumb fracture	4	630
26675		Treat hand dislocation	2	446
26676		Pin hand dislocation	2	446
26685		Treat hand dislocation	3	510
26686		Treat hand dislocation	3	510
26705		Treat knuckle dislocation	2	446
26706		Pin knuckle dislocation	2	446
26715		Treat knuckle dislocation	4	630
26727		Treat finger fracture, each	7	995
26735		Treat finger fracture, each	4	630
26742		Treat finger fracture, each	2	446
26746		Treat finger fracture, each	5	717
26756		Pin finger fracture, each	2	446
26765		Treat finger fracture, each	4	630
26776		Pin finger dislocation	2	446
26785		Treat finger dislocation	2	446
26820		Thumb fusion with graft	5	717
26841		Fusion of thumb	4	630
26842		Thumb fusion with graft	4	630
26843		Fusion of hand joint	3	510
26844		Fusion/graft of hand joint	3	510
26850		Fusion of knuckle	4	630
26852		Fusion of knuckle with graft	4	630
26860		Fusion of finger joint	3	510
26861		Fusion of finger jnt, add-on	2	446
26862		Fusion/graft of finger joint	4	630
26863		Fuse/graft added joint	3	510
26910		Amputate metacarpal bone	3	510
26951		Amputation of finger/thumb	2	446
26952		Amputation of finger/thumb	4	630
26990		Drainage of pelvis lesion	1	333
26991		Drainage of pelvis bursa	1	333
26992	D	Drainage of bone lesion	2	446
27000		Incision of hip tendon	2	446
27001		Incision of hip tendon	3	510
27003		Incision of hip tendon	3	510
27030	D	Drainage of hip joint	3	510

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
27033		Exploration of hip joint	3	510
27035		Denervation of hip joint	4	630
27040		Biopsy of soft tissues	1	333
27041		Biopsy of soft tissues	2	446
27047		Remove hip/pelvis lesion	2	446
27048		Remove hip/pelvis lesion	3	510
27049		Remove tumor, hip/pelvis	3	510
27050		Biopsy of sacroiliac joint	3	510
27052		Biopsy of hip joint	3	510
27060		Removal of ischial bursa	5	717
27062		Remove femur lesion/bursa	5	717
27065		Removal of hip bone lesion	5	717
27066		Removal of hip bone lesion	5	717
27067	A	Remove/graft hip bone lesion	5	717
27080		Removal of tail bone	2	446
27086		Remove hip foreign body	1	333
27087		Remove hip foreign body	3	510
27097		Revision of hip tendon	3	510
27098		Transfer tendon to pelvis	3	510
27100		Transfer of abdominal muscle	4	630
27105		Transfer of spinal muscle	4	630
27110		Transfer of iliopsoas muscle	4	630
27111		Transfer of iliopsoas muscle	4	630
27193		Treat pelvic ring fracture	1	333
27194		Treat pelvic ring fracture	2	446
27202		Treat tail bone fracture	2	446
27230		Treat thigh fracture	1	333
27238		Treat thigh fracture	1	333
27246		Treat thigh fracture	1	333
27250		Treat hip dislocation	1	333
27252		Treat hip dislocation	2	446
27257	A	Treat hip dislocation	3	510
27265		Treat hip dislocation	1	333
27266		Treat hip dislocation	2	446
27275		Manipulation of hip joint	2	446
27301		Drain thigh/knee lesion	3	510
27303	D	Drainage of bone lesion	2	446
27305		Incise thigh tendon & fascia	2	446
27306		Incision of thigh tendon	3	510
27307		Incision of thigh tendons	3	510
27310		Exploration of knee joint	4	630
27315		Partial removal, thigh nerve	2	446
27320		Partial removal, thigh nerve	2	446
27323		Biopsy, thigh soft tissues	1	333
27324		Biopsy, thigh soft tissues	1	333
27327		Removal of thigh lesion	2	446
27328		Removal of thigh lesion	3	510
27329	A	Remove tumor, thigh/knee	4	630
27330		Biopsy, knee joint lining	4	630
27331		Explore/treat knee joint	4	630
27332		Removal of knee cartilage	4	630
27333		Removal of knee cartilage	4	630
27334		Remove knee joint lining	4	630
27335		Remove knee joint lining	4	630
27340		Removal of kneecap bursa	3	510
27345		Removal of knee cyst	4	630
27347	A*	Remove knee cyst	4	630
27350		Removal of kneecap	4	630
27355		Remove femur lesion	3	510
27356		Remove femur lesion/graft	4	630
27357	A	Remove femur lesion/graft	5	717
27358	A	Remove femur lesion/fixation	5	717
27360		Partial removal, leg bone(s)	5	717
27372		Removal of foreign body	7	995
27380		Repair of kneecap tendon	1	333
27381		Repair/graft kneecap tendon	3	510
27385		Repair of thigh muscle	3	510
27386		Repair/graft of thigh muscle	3	510
27390		Incision of thigh tendon	1	333
27391		Incision of thigh tendons	2	446
27392		Incision of thigh tendons	3	510
27393		Lengthening of thigh tendon	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
27394		Lengthening of thigh tendons	3	510
27395		Lengthening of thigh tendons	3	510
27396		Transplant of thigh tendon	3	510
27397		Transplants of thigh tendons	3	510
27400		Revise thigh muscles/tendons	3	510
27403		Repair of knee cartilage	4	630
27405		Repair of knee ligament	4	630
27407		Repair of knee ligament	4	630
27409		Repair of knee ligaments	4	630
27418		Repair degenerated kneecap	3	510
27420		Revision of unstable kneecap	3	510
27422		Revision of unstable kneecap	7	995
27424		Revision/removal of kneecap	3	510
27425		Lateral retinacular release	7	995
27427		Reconstruction, knee	3	510
27428		Reconstruction, knee	4	630
27429		Reconstruction, knee	4	630
27430		Revision of thigh muscles	4	630
27435		Incision of knee joint	4	630
27437		Revise kneecap	4	630
27438		Revise kneecap with implant	5	717
27440	D	Revision of knee joint	5	717
27441		Revision of knee joint	5	717
27442		Revision of knee joint	5	717
27443		Revision of knee joint	5	717
27496	A	Decompression of thigh/knee	5	717
27497	A	Decompression of thigh/knee	3	510
27498	A	Decompression of thigh/knee	3	510
27499	A	Decompression of thigh/knee	3	510
27500		Treatment of thigh fracture	1	333
27501		Treatment of thigh fracture	2	446
27502		Treatment of thigh fracture	2	446
27503		Treatment of thigh fracture	3	510
27507	D	Treatment of thigh fracture	4	630
27508		Treatment of thigh fracture	1	333
27509		Treatment of thigh fracture	3	510
27510		Treatment of thigh fracture	1	333
27511	D	Treatment of thigh fracture	4	630
27513	D	Treatment of thigh fracture	5	717
27516		Treat thigh fx growth plate	1	333
27517		Treat thigh fx growth plate	1	333
27520		Treat kneecap fracture	1	333
27524	D	Treat kneecap fracture	3	510
27530		Treat knee fracture	1	333
27532		Treat knee fracture	1	333
27535	D	Treat knee fracture	3	510
27538		Treat knee fracture(s)	1	333
27550		Treat knee dislocation	1	333
27552		Treat knee dislocation	1	333
27560		Treat kneecap dislocation	1	333
27562		Treat kneecap dislocation	1	333
27566		Treat kneecap dislocation	2	446
27570		Fixation of knee joint	1	333
27594	A	Amputation follow-up surgery	3	510
27600	A	Decompression of lower leg	3	510
27601	A	Decompression of lower leg	3	510
27602	A	Decompression of lower leg	3	510
27603		Drain lower leg lesion	2	446
27604		Drain lower leg bursa	2	446
27605		Incision of achilles tendon	1	333
27606		Incision of achilles tendon	1	333
27607		Treat lower leg bone lesion	2	446
27610		Explore/treat ankle joint	2	446
27612		Exploration of ankle joint	3	510
27613	D	Biopsy lower leg soft tissue	1	333
27614		Biopsy lower leg soft tissue	2	446
27615		Remove tumor, lower leg	3	510
27618		Remove lower leg lesion	2	446
27619		Remove lower leg lesion	3	510
27620		Explore/treat ankle joint	4	630
27625		Remove ankle joint lining	4	630
27626		Remove ankle joint lining	4	630

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
27630		Removal of tendon lesion	3	510
27635		Remove lower leg bone lesion	3	510
27637		Remove/graft leg bone lesion	3	510
27638		Remove/graft leg bone lesion	3	510
27640		Partial removal of tibia	2	446
27641		Partial removal of fibula	2	446
27647	A	Extensive ankle/heel surgery	3	510
27650		Repair achilles tendon	3	510
27652		Repair/graft achilles tendon	3	510
27654		Repair of achilles tendon	3	510
27656		Repair leg fascia defect	2	446
27658		Repair of leg tendon, each	1	333
27659		Repair of leg tendon, each	2	446
27664		Repair of leg tendon, each	2	446
27665		Repair of leg tendon, each	2	446
27675		Repair lower leg tendons	2	446
27676		Repair lower leg tendons	3	510
27680		Release of lower leg tendon	3	510
27681		Release of lower leg tendons	2	446
27685		Revision of lower leg tendon	3	510
27686		Revise lower leg tendons	3	510
27687		Revision of calf tendon	3	510
27690		Revise lower leg tendon	4	630
27691		Revise lower leg tendon	4	630
27692		Revise additional leg tendon	3	510
27695		Repair of ankle ligament	2	446
27696		Repair of ankle ligaments	2	446
27698		Repair of ankle ligament	2	446
27700		Revision of ankle joint	5	717
27704		Removal of ankle implant	2	446
27705		Incision of tibia	2	446
27707		Incision of fibula	2	446
27709		Incision of tibia & fibula	2	446
27715	D	Revision of lower leg	4	630
27730		Repair of tibia epiphysis	2	446
27732		Repair of fibula epiphysis	2	446
27734		Repair lower leg epiphyses	2	446
27740		Repair of leg epiphyses	2	446
27742		Repair of leg epiphyses	2	446
27745		Reinforce tibia	3	510
27750		Treatment of tibia fracture	1	333
27752		Treatment of tibia fracture	1	333
27756		Treatment of tibia fracture	3	510
27758		Treatment of tibia fracture	4	630
27759		Treatment of tibia fracture	4	630
27760		Treatment of ankle fracture	1	333
27762		Treatment of ankle fracture	1	333
27766		Treatment of ankle fracture	3	510
27780		Treatment of fibula fracture	1	333
27781		Treatment of fibula fracture	1	333
27784		Treatment of fibula fracture	3	510
27786		Treatment of ankle fracture	1	333
27788		Treatment of ankle fracture	1	333
27792		Treatment of ankle fracture	3	510
27808		Treatment of ankle fracture	1	333
27810		Treatment of ankle fracture	1	333
27814		Treatment of ankle fracture	3	510
27816		Treatment of ankle fracture	1	333
27818		Treatment of ankle fracture	1	333
27822		Treatment of ankle fracture	3	510
27823		Treatment of ankle fracture	3	510
27824		Treat lower leg fracture	1	333
27825		Treat lower leg fracture	2	446
27826		Treat lower leg fracture	3	510
27827		Treat lower leg fracture	3	510
27828		Treat lower leg fracture	4	630
27829		Treat lower leg joint	2	446
27830		Treat lower leg dislocation	1	333
27831		Treat lower leg dislocation	1	333
27832		Treat lower leg dislocation	2	446
27840		Treat ankle dislocation	1	333
27842		Treat ankle dislocation	1	333

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
27846		Treat ankle dislocation	3	510
27848		Treat ankle dislocation	3	510
27860		Fixation of ankle joint	1	333
27870		Fusion of ankle joint	4	630
27871		Fusion of tibiofibular joint	4	630
27884		Amputation follow-up surgery	3	510
27889	A	Amputation of foot at ankle	3	510
27892	A	Decompression of leg	3	510
27893	A	Decompression of leg	3	510
27894	A	Decompression of leg	3	510
28002		Treatment of foot infection	3	510
28003		Treatment of foot infection	3	510
28005		Treat foot bone lesion	3	510
28008		Incision of foot fascia	3	510
28011	A	Incision of toe tendons	3	510
28020		Exploration of foot joint	2	446
28022	A	Exploration of foot joint	2	446
28024	A	Exploration of toe joint	2	446
28030		Removal of foot nerve	4	630
28035		Decompression of tibia nerve	4	630
28043		Excision of foot lesion	2	446
28045		Excision of foot lesion	3	510
28046		Resection of tumor, foot	3	510
28050		Biopsy of foot joint lining	2	446
28052	A	Biopsy of foot joint lining	2	446
28054		Biopsy of toe joint lining	2	446
28060		Partial removal, foot fascia	2	446
28062		Removal of foot fascia	3	510
28070		Removal of foot joint lining	3	510
28072		Removal of foot joint lining	3	510
28080		Removal of foot lesion	3	510
28086		Excise foot tendon sheath	2	446
28088		Excise foot tendon sheath	2	446
28090		Removal of foot lesion	3	510
28092		Removal of toe lesions	3	510
28100		Removal of ankle/heel lesion	2	446
28102		Remove/graft foot lesion	3	510
28103		Remove/graft foot lesion	3	510
28104		Removal of foot lesion	2	446
28106		Remove/graft foot lesion	3	510
28107		Remove/graft foot lesion	3	510
28110		Part removal of metatarsal	3	510
28111		Part removal of metatarsal	3	510
28112		Part removal of metatarsal	3	510
28113		Part removal of metatarsal	3	510
28114		Removal of metatarsal heads	3	510
28116		Revision of foot	3	510
28118		Removal of heel bone	4	630
28119		Removal of heel spur	4	630
28120		Part removal of ankle/heel	7	995
28122		Partial removal of foot bone	3	510
28126	A	Partial removal of toe	3	510
28130		Removal of ankle bone	3	510
28140		Removal of metatarsal	3	510
28150		Removal of toe	3	510
28153	A	Partial removal of toe	3	510
28160	A	Partial removal of toe	3	510
28171		Extensive foot surgery	3	510
28173		Extensive foot surgery	3	510
28175		Extensive foot surgery	3	510
28192		Removal of foot foreign body	2	446
28193		Removal of foot foreign body	4	630
28200		Repair of foot tendon	3	510
28202		Repair/graft of foot tendon	3	510
28208		Repair of foot tendon	3	510
28210		Repair/graft of foot tendon	3	510
28222		Release of foot tendons	1	333
28225		Release of foot tendon	1	333
28226		Release of foot tendons	1	333
28234	A	Incision of foot tendon	2	446
28238		Revision of foot tendon	3	510
28240		Release of big toe	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
28250		Revision of foot fascia	3	510
28260		Release of midfoot joint	3	510
28261		Revision of foot tendon	3	510
28262		Revision of foot and ankle	4	630
28264		Release of midfoot joint	1	333
28270	A	Release of foot contracture	3	510
28280		Fusion of toes	2	446
28285		Repair of hammertoe	3	510
28286		Repair of hammertoe	4	630
28288		Partial removal of foot bone	3	510
28289	A*	Repair hallux rigidus	3	510
28290		Correction of bunion	2	446
28292		Correction of bunion	2	446
28293		Correction of bunion	3	510
28294		Correction of bunion	3	510
28296		Correction of bunion	3	510
28297		Correction of bunion	3	510
28298		Correction of bunion	3	510
28299		Correction of bunion	5	717
28300		Incision of heel bone	2	446
28302		Incision of ankle bone	2	446
28304		Incision of midfoot bones	2	446
28305		Incise/graft midfoot bones	3	510
28306		Incision of metatarsal	4	630
28307		Incision of metatarsal	4	630
28308		Incision of metatarsal	2	446
28309		Incision of metatarsals	4	630
28310		Revision of big toe	3	510
28312		Revision of toe	3	510
28313		Repair deformity of toe	2	446
28315		Removal of sesamoid bone	4	630
28320		Repair of foot bones	4	630
28322		Repair of metatarsals	4	630
28340		Resect enlarged toe tissue	4	630
28341		Resect enlarged toe	4	630
28344		Repair extra toe(s)	4	630
28345		Repair webbed toe(s)	4	630
28400		Treatment of heel fracture	1	333
28405		Treatment of heel fracture	2	446
28406		Treatment of heel fracture	2	446
28415		Treat heel fracture	3	510
28420		Treat/graft heel fracture	4	630
28435		Treatment of ankle fracture	2	446
28436		Treatment of ankle fracture	2	446
28445		Treat ankle fracture	3	510
28456		Treat midfoot fracture	2	446
28465		Treat midfoot fracture, each	3	510
28476		Treat metatarsal fracture	2	446
28485		Treat metatarsal fracture	4	630
28496		Treat big toe fracture	2	446
28505		Treat big toe fracture	3	510
28525		Treat toe fracture	3	510
28531	A	Treat sesamoid bone fracture	3	510
28545		Treat foot dislocation	1	333
28546		Treat foot dislocation	2	446
28555		Repair foot dislocation	2	446
28575		Treat foot dislocation	1	333
28576		Treat foot dislocation	3	510
28585		Repair foot dislocation	3	510
28605		Treat foot dislocation	1	333
28606		Treat foot dislocation	2	446
28615		Repair foot dislocation	3	510
28635		Treat toe dislocation	1	333
28636		Treat toe dislocation	3	510
28645		Repair toe dislocation	3	510
28665		Treat toe dislocation	1	333
28666		Treat toe dislocation	3	510
28675		Repair of toe dislocation	3	510
28705		Fusion of foot bones	4	630
28715		Fusion of foot bones	4	630
28725		Fusion of foot bones	4	630
28730		Fusion of foot bones	4	630

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
28735		Fusion of foot bones	4	630
28737		Revision of foot bones	5	717
28740		Fusion of foot bones	4	630
28750		Fusion of big toe joint	4	630
28755		Fusion of big toe joint	4	630
28760		Fusion of big toe joint	4	630
28810		Amputation toe & metatarsal	2	446
28820		Amputation of toe	2	446
28825		Partial amputation of toe	2	446
29800	A	Jaw arthroscopy/surgery	3	510
29804		Jaw arthroscopy/surgery	3	510
29805		Shoulder arthroscopy, dx	3	510
29806		Shoulder arthroscopy/surgery	3	510
29807		Shoulder arthroscopy/surgery	3	510
29819		Shoulder arthroscopy/surgery	3	510
29820		Shoulder arthroscopy/surgery	3	510
29821		Shoulder arthroscopy/surgery	3	510
29822		Shoulder arthroscopy/surgery	3	510
29823		Shoulder arthroscopy/surgery	3	510
29824		Shoulder arthroscopy/surgery	5	717
29825		Shoulder arthroscopy/surgery	3	510
29826		Shoulder arthroscopy/surgery	3	510
29827	A*	Arthroscop rotator cuff repr	5	717
29830		Elbow arthroscopy	3	510
29834		Elbow arthroscopy/surgery	3	510
29835		Elbow arthroscopy/surgery	3	510
29836		Elbow arthroscopy/surgery	3	510
29837		Elbow arthroscopy/surgery	3	510
29838		Elbow arthroscopy/surgery	3	510
29840		Wrist arthroscopy	3	510
29843		Wrist arthroscopy/surgery	3	510
29844		Wrist arthroscopy/surgery	3	510
29845		Wrist arthroscopy/surgery	3	510
29846		Wrist arthroscopy/surgery	3	510
29847		Wrist arthroscopy/surgery	3	510
29848	A	Wrist endoscopy/surgery	9	1339
29850		Knee arthroscopy/surgery	4	630
29851		Knee arthroscopy/surgery	4	630
29855		Tibial arthroscopy/surgery	4	630
29856		Tibial arthroscopy/surgery	4	630
29860	A	Hip arthroscopy, dx	4	630
29861	A	Hip arthroscopy/surgery	4	630
29862	A	Hip arthroscopy/surgery	9	1339
29863	A	Hip arthroscopy/surgery	4	630
29870		Knee arthroscopy, dx	3	510
29871		Knee arthroscopy/drainage	3	510
29874		Knee arthroscopy/surgery	3	510
29875		Knee arthroscopy/surgery	4	630
29876		Knee arthroscopy/surgery	4	630
29877		Knee arthroscopy/surgery	4	630
29879		Knee arthroscopy/surgery	3	510
29880		Knee arthroscopy/surgery	4	630
29881		Knee arthroscopy/surgery	4	630
29882		Knee arthroscopy/surgery	3	510
29883		Knee arthroscopy/surgery	3	510
29884		Knee arthroscopy/surgery	3	510
29885		Knee arthroscopy/surgery	3	510
29886		Knee arthroscopy/surgery	3	510
29887		Knee arthroscopy/surgery	3	510
29888		Knee arthroscopy/surgery	3	510
29889		Knee arthroscopy/surgery	3	510
29891	A	Ankle arthroscopy/surgery	3	510
29892	A	Ankle arthroscopy/surgery	3	510
29893	A	Scope, plantar fasciotomy	9	1339
29894		Ankle arthroscopy/surgery	3	510
29895		Ankle arthroscopy/surgery	3	510
29897		Ankle arthroscopy/surgery	3	510
29898		Ankle arthroscopy/surgery	3	510
29899	A*	Ankle arthroscopy/surgery	3	510
29900		Mcp joint arthroscopy, dx	3	510
29901		Mcp joint arthroscopy, surg	3	510
29902		Mcp joint arthroscopy, surg	3	510

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
30115		Removal of nose polyp(s)	2	446
30117		Removal of intranasal lesion	3	510
30118		Removal of intranasal lesion	3	510
30120		Revision of nose	1	333
30124	D	Removal of nose lesion	1	333
30125		Removal of nose lesion	2	446
30130		Removal of turbinate bones	3	510
30140		Removal of turbinate bones	2	446
30150		Partial removal of nose	3	510
30160		Removal of nose	4	630
30310		Remove nasal foreign body	1	333
30320		Remove nasal foreign body	2	446
30400		Reconstruction of nose	4	630
30410		Reconstruction of nose	5	717
30420		Reconstruction of nose	5	717
30430		Revision of nose	3	510
30435		Revision of nose	5	717
30450		Revision of nose	7	995
30460	A	Revision of nose	7	995
30462	A	Revision of nose	9	1339
30465	A*	Repair nasal stenosis	9	1339
30520		Repair of nasal septum	4	630
30540		Repair nasal defect	5	717
30545	A	Repair nasal defect	5	717
30560		Release of nasal adhesions	2	446
30580		Repair upper jaw fistula	4	630
30600		Repair mouth/nose fistula	4	630
30620		Intranasal reconstruction	7	995
30630		Repair nasal septum defect	7	995
30801		Cauterization, inner nose	1	333
30802		Cauterization, inner nose	1	333
30903		Control of nosebleed	1	333
30905		Control of nosebleed	1	333
30906		Repeat control of nosebleed	1	333
30915		Ligation, nasal sinus artery	2	446
30920		Ligation, upper jaw artery	3	510
30930	A	Therapy, fracture of nose	4	630
31020		Exploration, maxillary sinus	2	446
31030		Exploration, maxillary sinus	3	510
31032		Explore sinus,remove polyps	4	630
31050		Exploration, sphenoid sinus	2	446
31051		Sphenoid sinus surgery	4	630
31070		Exploration of frontal sinus	2	446
31075		Exploration of frontal sinus	4	630
31080		Removal of frontal sinus	4	630
31081	A	Removal of frontal sinus	4	630
31084		Removal of frontal sinus	4	630
31085	A	Removal of frontal sinus	4	630
31086		Removal of frontal sinus	4	630
31087	A	Removal of frontal sinus	4	630
31090		Exploration of sinuses	5	717
31200		Removal of ethmoid sinus	2	446
31201		Removal of ethmoid sinus	5	717
31205		Removal of ethmoid sinus	3	510
31233		Nasal/sinus endoscopy, dx	2	446
31235		Nasal/sinus endoscopy, dx	1	333
31237		Nasal/sinus endoscopy, surg	2	446
31238		Nasal/sinus endoscopy, surg	1	333
31239		Nasal/sinus endoscopy, surg	4	630
31240		Nasal/sinus endoscopy, surg	2	446
31254		Revision of ethmoid sinus	3	510
31255		Removal of ethmoid sinus	5	717
31256		Exploration maxillary sinus	3	510
31267		Endoscopy, maxillary sinus	3	510
31276		Sinus endoscopy, surgical	3	510
31287		Nasal/sinus endoscopy, surg	3	510
31288		Nasal/sinus endoscopy, surg	3	510
31300		Removal of larynx lesion	5	717
31320		Diagnostic incision, larynx	2	446
31400	A	Revision of larynx	2	446
31420	A	Removal of epiglottis	2	446
31510		Laryngoscopy with biopsy	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
31511		Remove foreign body, larynx	2	446
31512		Removal of larynx lesion	2	446
31513		Injection into vocal cord	2	446
31515		Laryngoscopy for aspiration	1	333
31525		Diagnostic laryngoscopy	1	333
31526		Diagnostic laryngoscopy	2	446
31527		Laryngoscopy for treatment	1	333
31528		Laryngoscopy and dilation	2	446
31529		Laryngoscopy and dilation	2	446
31530		Operative laryngoscopy	2	446
31531		Operative laryngoscopy	3	510
31535		Operative laryngoscopy	2	446
31536		Operative laryngoscopy	3	510
31540		Operative laryngoscopy	3	510
31541		Operative laryngoscopy	4	630
31560		Operative laryngoscopy	5	717
31561		Operative laryngoscopy	5	717
31570		Laryngoscopy with injection	2	446
31571		Laryngoscopy with injection	2	446
31576		Laryngoscopy with biopsy	2	446
31577		Remove foreign body, larynx	2	446
31578		Removal of larynx lesion	2	446
31580		Revision of larynx	5	717
31582		Revision of larynx	5	717
31584	D	Treat larynx fracture	4	630
31585		Treat larynx fracture	1	333
31586		Treat larynx fracture	2	446
31588		Revision of larynx	5	717
31590		Reinnervate larynx	5	717
31595		Larynx nerve surgery	2	446
31600	D	Incision of windpipe	2	446
31611		Surgery/speech prosthesis	3	510
31612		Puncture/clear windpipe	1	333
31613		Repair windpipe opening	2	446
31614		Repair windpipe opening	2	446
31615		Visualization of windpipe	1	333
31622		Dx bronchoscope/wash	1	333
31623	A*	Dx bronchoscope/brush	2	446
31624	A*	Dx bronchoscope/lavage	2	446
31625		Bronchoscopy with biopsy	2	446
31628		Bronchoscopy with biopsy	2	446
31629		Bronchoscopy with biopsy	2	446
31630		Bronchoscopy with repair	2	446
31631		Bronchoscopy with dilation	2	446
31635		Remove foreign body, airway	2	446
31640		Bronchoscopy & remove lesion	2	446
31641		Bronchoscopy, treat blockage	2	446
31643	A*	Diag bronchoscope/catheter	2	446
31645		Bronchoscopy, clear airways	1	333
31646		Bronchoscopy, reclear airway	1	333
31656		Bronchoscopy, inj for xray	1	333
31700		Insertion of airway catheter	1	333
31710	D	Insertion of airway catheter	1	333
31715	D	Injection for bronchus x-ray	1	333
31717		Bronchial brush biopsy	1	333
31720		Clearance of airways	1	333
31730		Intro, windpipe wire/tube	1	333
31750		Repair of windpipe	5	717
31755		Repair of windpipe	2	446
31785	D	Remove windpipe lesion	4	630
31800	D	Repair of windpipe injury	2	446
31820		Closure of windpipe lesion	1	333
31825		Repair of windpipe defect	2	446
31830		Revise windpipe scar	2	446
32000		Drainage of chest	1	333
32002	D	Treatment of collapsed lung	2	446
32005	D	Treat lung lining chemically	2	446
32020	D	Insertion of chest tube	2	446
32400		Needle biopsy chest lining	1	333
32405		Biopsy, lung or mediastinum	1	333
32420		Puncture/clear lung	1	333
33010		Drainage of heart sac	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
33011		Repeat drainage of heart sac	2	446
33222	A	Revise pocket, pacemaker	2	446
33223	A	Revise pocket, pacing-defib	2	446
34101	D	Removal of artery clot	3	510
35188	A	Repair blood vessel lesion	4	630
35207	A	Repair blood vessel lesion	4	630
35875	A	Removal of clot in graft	9	1339
35876	A	Removal of clot in graft	9	1339
36260	A	Insertion of infusion pump	3	510
36261		Revision of infusion pump	2	446
36262		Removal of infusion pump	1	333
36488	A	Insertion of catheter, vein	1	333
36489		Insertion of catheter, vein	1	333
36490	A	Insertion of catheter, vein	1	333
36491		Insertion of catheter, vein	1	333
36530		Insertion of infusion pump	3	510
36531		Revision of infusion pump	2	446
36532		Removal of infusion pump	1	333
36533		Insertion of access device	3	510
36534		Revision of access device	2	446
36535		Removal of access device	1	333
36640		Insertion catheter, artery	1	333
36800		Insertion of cannula	3	510
36810		Insertion of cannula	3	510
36815		Insertion of cannula	3	510
36819		Av fusion/uppr arm vein	9	1339
36820		Av fusion/forearm vein	3	510
36821		Av fusion direct any site	3	510
36825		Artery-vein graft	4	630
36830		Artery-vein graft	4	630
36831	A*	Open thrombect av fistula	9	1339
36832		Av fistula revision, open	4	630
36833		Av fistula revision	4	630
36835		Artery to vein shunt	4	630
36860		External cannula declotting	2	446
36861		Cannula declotting	3	510
36870	A*	Percut thrombect av fistula	9	1339
37607	A	Ligation of a-v fistula	3	510
37609		Temporal artery procedure	2	446
37650	A	Revision of major vein	2	446
37700		Revise leg vein	2	446
37720		Removal of leg vein	3	510
37730		Removal of leg veins	3	510
37735		Removal of leg veins/lesion	3	510
37760		Revision of leg veins	3	510
37780		Revision of leg vein	3	510
37785		Revise secondary varicosity	3	510
37790	A	Penile venous occlusion	3	510
38300		Drainage, lymph node lesion	1	333
38305		Drainage, lymph node lesion	2	446
38308		Incision of lymph channels	2	446
38500		Biopsy/removal, lymph nodes	2	446
38505		Needle biopsy, lymph nodes	1	333
38510		Biopsy/removal, lymph nodes	2	446
38520		Biopsy/removal, lymph nodes	2	446
38525		Biopsy/removal, lymph nodes	2	446
38530		Biopsy/removal, lymph nodes	2	446
38542		Explore deep node(s), neck	2	446
38550		Removal, neck/armpit lesion	3	510
38555		Removal, neck/armpit lesion	4	630
38570	A*	Laparoscopy, lymph node biop	9	1339
38571	A*	Laparoscopy, lymphadenectomy	9	1339
38572	A*	Laparoscopy, lymphadenectomy	9	1339
38700	D	Removal of lymph nodes, neck	2	446
38740		Remove armpit lymph nodes	2	446
38745		Remove armpit lymph nodes	4	630
38760		Remove groin lymph nodes	2	446
38790	D	Inject for lymphatic x-ray	1	333
40500		Partial excision of lip	2	446
40510		Partial excision of lip	2	446
40520		Partial excision of lip	2	446
40525		Reconstruct lip with flap	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
40527		Reconstruct lip with flap	2	446
40530		Partial removal of lip	2	446
40650		Repair lip	3	510
40652		Repair lip	3	510
40654		Repair lip	3	510
40700	A	Repair cleft lip/nasal	7	995
40701	A	Repair cleft lip/nasal	7	995
40720	A	Repair cleft lip/nasal	7	995
40761	A	Repair cleft lip/nasal	3	510
40801		Drainage of mouth lesion	2	446
40805	D	Removal, foreign body, mouth	2	446
40806	D	Incision of lip fold	1	333
40814		Excise/repair mouth lesion	2	446
40816		Excision of mouth lesion	2	446
40818		Excise oral mucosa for graft	1	333
40819		Excise lip or cheek fold	1	333
40820	D	Treatment of mouth lesion	1	333
40831		Repair mouth laceration	1	333
40840		Reconstruction of mouth	2	446
40842		Reconstruction of mouth	3	510
40843		Reconstruction of mouth	3	510
40844		Reconstruction of mouth	5	717
40845		Reconstruction of mouth	5	717
41000	D	Drainage of mouth lesion	1	333
41005		Drainage of mouth lesion	1	333
41006		Drainage of mouth lesion	1	333
41007		Drainage of mouth lesion	1	333
41008		Drainage of mouth lesion	1	333
41009		Drainage of mouth lesion	1	333
41010		Incision of tongue fold	1	333
41015		Drainage of mouth lesion	1	333
41016		Drainage of mouth lesion	1	333
41017		Drainage of mouth lesion	1	333
41018		Drainage of mouth lesion	1	333
41105	D	Biopsy of tongue	2	446
41110	D	Excision of tongue lesion	1	333
41112		Excision of tongue lesion	2	446
41113		Excision of tongue lesion	2	446
41114		Excision of tongue lesion	2	446
41115	D	Excision of tongue fold	1	333
41116		Excision of mouth lesion	1	333
41120		Partial removal of tongue	5	717
41250		Repair tongue laceration	2	446
41251		Repair tongue laceration	2	446
41252		Repair tongue laceration	2	446
41500		Fixation of tongue	1	333
41510		Tongue to lip surgery	1	333
41520		Reconstruction, tongue fold	2	446
41800		Drainage of gum lesion	1	333
41805	D	Removal foreign body, gum	1	333
41806	D	Removal foreign body, jawbone	1	333
41827		Excision of gum lesion	2	446
42000		Drainage mouth roof lesion	2	446
42104	D	Excision lesion, mouth roof	2	446
42106	D	Excision lesion, mouth roof	2	446
42107		Excision lesion, mouth roof	2	446
42120		Remove palate/lesion	4	630
42140		Excision of uvula	2	446
42145		Repair palate, pharynx/uvula	5	717
42160	D	Treatment mouth roof lesion	1	333
42180		Repair palate	1	333
42182		Repair palate	2	446
42200		Reconstruct cleft palate	5	717
42205		Reconstruct cleft palate	5	717
42210		Reconstruct cleft palate	5	717
42215		Reconstruct cleft palate	7	995
42220		Reconstruct cleft palate	5	717
42225	D	Reconstruct cleft palate	5	717
42226	A	Lengthening of palate	5	717
42235		Repair palate	5	717
42260		Repair nose to lip fistula	4	630
42281	D	Insertion, palate prosthesis	3	510

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
42300		Drainage of salivary gland	1	333
42305		Drainage of salivary gland	2	446
42310		Drainage of salivary gland	1	333
42320		Drainage of salivary gland	1	333
42325		Create salivary cyst drain	2	446
42335	D	Removal of salivary stone	3	510
42340		Removal of salivary stone	2	446
42405		Biopsy of salivary gland	2	446
42408		Excision of salivary cyst	3	510
42409		Drainage of salivary cyst	3	510
42410		Excise parotid gland/lesion	3	510
42415	A	Excise parotid gland/lesion	3	510
42420		Excise parotid gland/lesion	7	995
42425		Excise parotid gland/lesion	7	995
42440		Excise submaxillary gland	3	510
42450		Excise sublingual gland	2	446
42500		Repair salivary duct	3	510
42505		Repair salivary duct	4	630
42507		Parotid duct diversion	3	510
42508		Parotid duct diversion	4	630
42509		Parotid duct diversion	4	630
42510		Parotid duct diversion	4	630
42600		Closure of salivary fistula	1	333
42700		Drainage of tonsil abscess	1	333
42720		Drainage of throat abscess	1	333
42725		Drainage of throat abscess	2	446
42802		Biopsy of throat	1	333
42804		Biopsy of upper nose/throat	1	333
42806		Biopsy of upper nose/throat	2	446
42808		Excise pharynx lesion	2	446
42810		Excision of neck cyst	3	510
42815		Excision of neck cyst	5	717
42820	A	Remove tonsils and adenoids	3	510
42821		Remove tonsils and adenoids	5	717
42825	A	Removal of tonsils	4	630
42826		Removal of tonsils	4	630
42830	A	Removal of adenoids	4	630
42831		Removal of adenoids	4	630
42835	A	Removal of adenoids	4	630
42836		Removal of adenoids	4	630
42860		Excision of tonsil tags	3	510
42870		Excision of lingual tonsil	3	510
42890	A	Partial removal of pharynx	7	995
42892	A	Revision of pharyngeal walls	7	995
42900		Repair throat wound	1	333
42950		Reconstruction of throat	2	446
42955		Surgical opening of throat	2	446
42960		Control throat bleeding	1	333
42962		Control throat bleeding	2	446
42972	A	Control nose/throat bleeding	3	510
43200		Esophagus endoscopy	1	333
43201	A*	Esoph scope w/submucous inj	1	333
43202		Esophagus endoscopy, biopsy	1	333
43204		Esophagus endoscopy & inject	1	333
43205	A	Esophagus endoscopy/ligation	1	333
43215		Esophagus endoscopy	1	333
43216		Esophagus endoscopy/lesion	1	333
43217		Esophagus endoscopy	1	333
43219		Esophagus endoscopy	1	333
43220		Esoph endoscopy, dilation	1	333
43226		Esoph endoscopy, dilation	1	333
43227		Esoph endoscopy, repair	2	446
43228		Esoph endoscopy, ablation	2	446
43231	A*	Esoph endoscopy w/us exam	2	446
43232	A*	Esoph endoscopy w/us fn bx	2	446
43234		Upper GI endoscopy, exam	1	333
43235		Uppr gi endoscopy, diagnosis	1	333
43236	A*	Uppr gi scope w/submuc inj	2	446
43239		Upper GI endoscopy, biopsy	2	446
43240	A*	Esoph endoscope w/drain cyst	2	446
43241		Upper GI endoscopy with tube	2	446
43242	A*	Uppr gi endoscopy w/us fn bx	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
43243		Upper gi endoscopy & inject	2	446
43244	A	Upper GI endoscopy/ligation	2	446
43245		Operative upper GI endoscopy	2	446
43246		Place gastrostomy tube	2	446
43247		Operative upper GI endoscopy	2	446
43248		Uppr gi endoscopy/guide wire	2	446
43249		Esoph endoscopy, dilation	2	446
43250		Upper GI endoscopy/tumor	2	446
43251		Operative upper GI endoscopy	2	446
43255		Operative upper GI endoscopy	2	446
43256	A*	Uppr gi endoscopy w stent	3	510
43258		Operative upper GI endoscopy	3	510
43259		Endoscopic ultrasound exam	3	510
43260		Endo cholangiopancreatograph	2	446
43261		Endo cholangiopancreatograph	2	446
43262		Endo cholangiopancreatograph	2	446
43263		Endo cholangiopancreatograph	2	446
43264		Endo cholangiopancreatograph	2	446
43265		Endo cholangiopancreatograph	2	446
43267		Endo cholangiopancreatograph	2	446
43268		Endo cholangiopancreatograph	2	446
43269		Endo cholangiopancreatograph	2	446
43271		Endo cholangiopancreatograph	2	446
43272		Endo cholangiopancreatograph	2	446
43450		Dilate esophagus	1	333
43453		Dilate esophagus	1	333
43456		Dilate esophagus	2	446
43458		Dilate esophagus	2	446
43600		Biopsy of stomach	1	333
43653	A*	Laparoscopy, gastrostomy	9	1339
43750		Place gastrostomy tube	2	446
43760		Change gastrostomy tube	1	333
43870		Repair stomach opening	1	333
44100		Biopsy of bowel	1	333
44312		Revision of ileostomy	1	333
44340		Revision of colostomy	3	510
44345	D	Revision of colostomy	4	630
44346	D	Revision of colostomy	4	630
44360		Small bowel endoscopy	2	446
44361		Small bowel endoscopy/biopsy	2	446
44363		Small bowel endoscopy	2	446
44364		Small bowel endoscopy	2	446
44365		Small bowel endoscopy	2	446
44366		Small bowel endoscopy	2	446
44369		Small bowel endoscopy	2	446
44370	A*	Small bowel endoscopy/stent	9	1339
44372		Small bowel endoscopy	2	446
44373		Small bowel endoscopy	2	446
44376	A	Small bowel endoscopy	2	446
44377	A	Small bowel endoscopy/biopsy	2	446
44378	A	Small bowel endoscopy	2	446
44379	A*	S bowel endoscope w/stent	9	1339
44380		Small bowel endoscopy	1	333
44382		Small bowel endoscopy	1	333
44383	A*	Ileoscopy w/stent	9	1339
44385		Endoscopy of bowel pouch	1	333
44386		Endoscopy, bowel pouch/biop	1	333
44388		Colon endoscopy	1	333
44389		Colonoscopy with biopsy	1	333
44390		Colonoscopy for foreign body	1	333
44391		Colonoscopy for bleeding	1	333
44392		Colonoscopy & polypectomy	1	333
44393		Colonoscopy, lesion removal	1	333
44394		Colonoscopy w/snare	1	333
45000		Drainage of pelvic abscess	1	333
45005		Drainage of rectal abscess	2	446
45020		Drainage of rectal abscess	2	446
45100		Biopsy of rectum	1	333
45108		Removal of anorectal lesion	2	446
45150		Excision of rectal stricture	2	446
45160	A	Excision of rectal lesion	2	446
45170		Excision of rectal lesion	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
45190	A	Destruction, rectal tumor	9	1339
45305		Proctosigmoidoscopy w/bx	1	333
45307		Proctosigmoidoscopy fb	1	333
45308		Proctosigmoidoscopy removal	1	333
45309		Proctosigmoidoscopy removal	1	333
45315		Proctosigmoidoscopy removal	1	333
45317		Proctosigmoidoscopy bleed	1	333
45320		Proctosigmoidoscopy ablate	1	333
45321		Proctosigmoidoscopy volvul	1	333
45331		Sigmoidoscopy and biopsy	1	333
45332		Sigmoidoscopy w/fb removal	1	333
45333		Sigmoidoscopy & polypectomy	1	333
45334		Sigmoidoscopy for bleeding	1	333
45335	A*	Sigmoidoscope w/submub inj	1	333
45337		Sigmoidoscopy & decompress	1	333
45338		Sigmoidoscopy w/tumr remove	1	333
45339		Sigmoidoscopy w/ablate tumr	1	333
45340	A*	Sig w/balloon dilation	1	333
45355		Surgical colonoscopy	1	333
45378		Diagnostic colonoscopy	2	446
45379		Colonoscopy w/fb removal	2	446
45380		Colonoscopy and biopsy	2	446
45381	A*	Colonoscope, submucous inj	2	446
45382		Colonoscopy/control bleeding	2	446
45383		Lesion removal colonoscopy	2	446
45384		Lesion remove colonoscopy	2	446
45385		Lesion removal colonoscopy	2	446
45386	A*	Colonoscope dilate stricture	2	446
45500		Repair of rectum	2	446
45505		Repair of rectum	2	446
45560		Repair of rectocele	2	446
45900		Reduction of rectal prolapse	1	333
45905		Dilation of anal sphincter	1	333
45910		Dilation of rectal narrowing	1	333
45915		Remove rectal obstruction	1	333
46020		Placement of seton	3	510
46030		Removal of rectal marker	1	333
46040		Incision of rectal abscess	3	510
46045		Incision of rectal abscess	2	446
46050		Incision of anal abscess	1	333
46060		Incision of rectal abscess	2	446
46080		Incision of anal sphincter	3	510
46200		Removal of anal fissure	2	446
46210		Removal of anal crypt	2	446
46211		Removal of anal crypts	2	446
46220		Removal of anal tab	1	333
46250		Hemorrhoidectomy	3	510
46255		Hemorrhoidectomy	3	510
46257		Remove hemorrhoids & fissure	3	510
46258		Remove hemorrhoids & fistula	3	510
46260		Hemorrhoidectomy	3	510
46261		Remove hemorrhoids & fissure	4	630
46262		Remove hemorrhoids & fistula	4	630
46270		Removal of anal fistula	3	510
46275		Removal of anal fistula	3	510
46280		Removal of anal fistula	4	630
46285		Removal of anal fistula	1	333
46288	A	Repair anal fistula	4	630
46608		Anoscopy/remove for body	1	333
46610		Anoscopy/remove lesion	1	333
46611		Anoscopy	1	333
46612		Anoscopy/remove lesions	1	333
46615	A	Anoscopy	2	446
46700		Repair of anal stricture	3	510
46750		Repair of anal sphincter	3	510
46753		Reconstruction of anus	3	510
46754		Removal of suture from anus	2	446
46760		Repair of anal sphincter	2	446
46761	A	Repair of anal sphincter	3	510
46762	A	Implant artificial sphincter	7	995
46917	A	Laser surgery, anal lesions	1	333
46922		Excision of anal lesion(s)	1	333

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
46924		Destruction, anal lesion(s)	1	333
46937		Cryotherapy of rectal lesion	2	446
46938		Cryotherapy of rectal lesion	2	446
47000		Needle biopsy of liver	1	333
47510		Insert catheter, bile duct	2	446
47511	A	Insert bile duct drain	9	1339
47525		Change bile duct catheter	1	333
47530		Revise/reinsert bile tube	1	333
47552		Biliary endoscopy thru skin	2	446
47553		Biliary endoscopy thru skin	3	510
47554		Biliary endoscopy thru skin	3	510
47555		Biliary endoscopy thru skin	3	510
47556	A	Biliary endoscopy thru skin	9	1339
47560		Laparoscopy w/cholangio	3	510
47561		Laparo w/cholangio/biopsy	3	510
47630		Remove bile duct stone	3	510
48102		Needle biopsy, pancreas	1	333
49000	D	Exploration of abdomen	4	630
49080		Puncture, peritoneal cavity	2	446
49081		Removal of abdominal fluid	2	446
49085		Remove abdomen foreign body	2	446
49180		Biopsy, abdominal mass	1	333
49250		Excision of umbilicus	4	630
49320		Diag laparo separate proc	3	510
49321		Laparoscopy, biopsy	4	630
49322		Laparoscopy, aspiration	4	630
49400	D	Air injection into abdomen	1	333
49420		Insert abdominal drain	1	333
49421		Insert abdominal drain	1	333
49422	A	Remove perm cannula/catheter	1	333
49425	D	Insert abdomen-venous drain	2	446
49426		Revise abdomen-venous shunt	2	446
49495	A	Rpr ing hernia baby, reduc	4	630
49496	A	Rpr ing hernia baby, blocked	4	630
49500	A	Rpr ing hernia, init, reduce	4	630
49501	A	Rpr ing hernia, init blocked	9	1339
49505		Rpr i/hern init reduc>5 yr	4	630
49507	A	Rpr i/hern init block>5 yr	9	1339
49520		Rerepair ing hernia, reduce	7	995
49521	A	Rerepair ing hernia, blocked	9	1339
49525		Repair ing hernia, sliding	4	630
49540		Repair lumbar hernia	2	446
49550		Rpr fem hernia, init, reduce	5	717
49553	A	Rpr fem hernia, init blocked	9	1339
49555		Rerepair fem hernia, reduce	5	717
49557	A	Rerepair fem hernia, blocked	9	1339
49560		Rpr ventral hern init, reduc	4	630
49561	A	Rpr ventral hern init, block	9	1339
49565		Rerepair ventrl hern, reduce	4	630
49566	A	Rerepair ventrl hern, block	9	1339
49568	A	Hernia repair w/mesh	7	995
49570		Rpr epigastric hern, reduce	4	630
49572	A	Rpr epigastric hern, blocked	9	1339
49580	A	Rpr umbil hern, reduc <5 yr	4	630
49582	A	Rpr umbil hern, block < 5 yr	9	1339
49585		Rpr umbil hern, reduc > 5 yr	4	630
49587	A	Rpr umbil hern, block > 5 yr	9	1339
49590		Repair spigelian hernia	3	510
49600	A	Repair umbilical lesion	4	630
49650		Laparo hernia repair initial	4	630
49651		Laparo hernia repair recur	7	995
50020	D	Renal abscess, open drain	2	446
50040	D	Drainage of kidney	3	510
50200		Biopsy of kidney	1	333
50390		Drainage of kidney lesion	1	333
50392		Insert kidney drain	1	333
50393		Insert ureteral tube	1	333
50395		Create passage to kidney	1	333
50396		Measure kidney pressure	1	333
50398		Change kidney tube	1	333
50520	D	Close kidney-skin fistula	1	333
50551		Kidney endoscopy	1	333

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
50553		Kidney endoscopy	1	333
50555		Kidney endoscopy & biopsy	1	333
50557		Kidney endoscopy & treatment	1	333
50559		Renal endoscopy/radiotracer	1	333
50561		Kidney endoscopy & treatment	1	333
50570	D	Kidney endoscopy	1	333
50572	D	Kidney endoscopy	1	333
50574	D	Kidney endoscopy & biopsy	1	333
50576	D	Kidney endoscopy & treatment	1	333
50578	D	Renal endoscopy/radiotracer	1	333
50580	D	Kidney endoscopy & treatment	1	333
50684	D	Injection for ureter x-ray	1	333
50688		Change of ureter tube	1	333
50690	D	Injection for ureter x-ray	1	333
50947	A*	Laparo new ureter/bladder	9	1339
50948	A*	Laparo new ureter/bladder	9	1339
50951		Endoscopy of ureter	1	333
50953		Endoscopy of ureter	1	333
50955		Ureter endoscopy & biopsy	1	333
50957		Ureter endoscopy & treatment	1	333
50959		Ureter endoscopy & tracer	1	333
50961		Ureter endoscopy & treatment	1	333
50970		Ureter endoscopy	1	333
50972		Ureter endoscopy & catheter	1	333
50974		Ureter endoscopy & biopsy	1	333
50976		Ureter endoscopy & treatment	1	333
50978		Ureter endoscopy & tracer	1	333
50980		Ureter endoscopy & treatment	1	333
51005	D	Drainage of bladder	1	333
51010		Drainage of bladder	1	333
51020		Incise & treat bladder	4	630
51030		Incise & treat bladder	4	630
51040		Incise & drain bladder	4	630
51045		Incise bladder/drain ureter	4	630
51050	A	Removal of bladder stone	4	630
51065	A	Remove ureter calculus	4	630
51080	A	Drainage of bladder abscess	1	333
51500		Removal of bladder cyst	4	630
51520	A	Removal of bladder lesion	4	630
51600	D	Injection for bladder x-ray	1	333
51605	D	Preparation for bladder xray	1	333
51610	D	Injection for bladder x-ray	1	333
51710		Change of bladder tube	1	333
51715	A	Endoscopic injection/implant	3	510
51725	D	Simple cystometrogram	1	333
51726		Complex cystometrogram	1	333
51772		Urethra pressure profile	1	333
51785		Anal/urinary muscle study	1	333
51865	D	Repair of bladder wound	4	630
51880		Repair of bladder opening	1	333
51900	D	Repair bladder/vagina lesion	4	630
51920	D	Close bladder-uterus fistula	3	510
52000		Cystoscopy	1	333
52001		Cystoscopy, removal of clots	2	446
52005		Cystoscopy & ureter catheter	2	446
52007		Cystoscopy and biopsy	2	446
52010		Cystoscopy & duct catheter	2	446
52204		Cystoscopy	2	446
52214		Cystoscopy and treatment	2	446
52224		Cystoscopy and treatment	2	446
52234		Cystoscopy and treatment	2	446
52235		Cystoscopy and treatment	3	510
52240		Cystoscopy and treatment	3	510
52250		Cystoscopy and radiotracer	4	630
52260		Cystoscopy and treatment	2	446
52270		Cystoscopy & revise urethra	2	446
52275		Cystoscopy & revise urethra	2	446
52276		Cystoscopy and treatment	3	510
52277		Cystoscopy and treatment	2	446
52281		Cystoscopy and treatment	2	446
52282	A	Cystoscopy, implant stent	9	1339
52283		Cystoscopy and treatment	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
52285		Cystoscopy and treatment	2	446
52290		Cystoscopy and treatment	2	446
52300		Cystoscopy and treatment	2	446
52305		Cystoscopy and treatment	2	446
52310		Cystoscopy and treatment	2	446
52315		Cystoscopy and treatment	2	446
52317		Remove bladder stone	1	333
52318		Remove bladder stone	2	446
52320		Cystoscopy and treatment	5	717
52325		Cystoscopy, stone removal	4	630
52327	A	Cystoscopy, inject material	2	446
52330		Cystoscopy and treatment	2	446
52332		Cystoscopy and treatment	2	446
52334		Create passage to kidney	3	510
52341	A*	Cysto w/ureter stricture tx	3	510
52342	A*	Cysto w/up stricture tx	3	510
52343	A*	Cysto w/renal stricture tx	3	510
52344	A*	Cysto/uretero, stone remove	3	510
52345	A*	Cysto/uretero w/up stricture	3	510
52346	A*	Cystouretero w/renal strict	3	510
52351		Cystouretero & or pyeloscope	3	510
52352		Cystouretero w/stone remove	4	630
52353		Cystouretero w/lithotripsy	4	630
52354		Cystouretero w/biopsy	4	630
52355	A	Cystouretero w/excise tumor	4	630
52400		Cystouretero w/congen repr	3	510
52450		Incision of prostate	3	510
52500		Revision of bladder neck	3	510
52510	A	Dilation prostatic urethra	3	510
52601		Prostatectomy (TURP)	4	630
52606		Control postop bleeding	1	333
52612		Prostatectomy, first stage	2	446
52614		Prostatectomy, second stage	1	333
52620		Remove residual prostate	1	333
52630		Remove prostate regrowth	2	446
52640		Relieve bladder contracture	2	446
52647	A	Laser surgery of prostate	9	1339
52648	A	Laser surgery of prostate	9	1339
52700		Drainage of prostate abscess	2	446
53000		Incision of urethra	1	333
53010		Incision of urethra	1	333
53020		Incision of urethra	1	333
53040		Drainage of urethra abscess	2	446
53080	A	Drainage of urinary leakage	3	510
53200		Biopsy of urethra	1	333
53210		Removal of urethra	5	717
53215		Removal of urethra	5	717
53220		Treatment of urethra lesion	2	446
53230		Removal of urethra lesion	2	446
53235		Removal of urethra lesion	3	510
53240		Surgery for urethra pouch	2	446
53250		Removal of urethra gland	2	446
53260		Treatment of urethra lesion	2	446
53265		Treatment of urethra lesion	2	446
53270	A	Removal of urethra gland	2	446
53275		Repair of urethra defect	2	446
53400		Revise urethra, stage 1	3	510
53405		Revise urethra, stage 2	2	446
53410		Reconstruction of urethra	2	446
53420		Reconstruct urethra, stage 1	3	510
53425		Reconstruct urethra, stage 2	2	446
53430		Reconstruction of urethra	2	446
53431		Reconstruct urethra/bladder	2	446
53440		Correct bladder function	2	446
53442		Remove perineal prosthesis	1	333
53444		Insert tandem cuff	2	446
53445		Insert uro/ves nck sphincter	1	333
53446		Remove uro sphincter	1	333
53447		Remove/replace ur sphincter	1	333
53449		Repair uro sphincter	1	333
53450		Revision of urethra	1	333
53460		Revision of urethra	1	333

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
53502		Repair of urethra injury	2	446
53505		Repair of urethra injury	2	446
53510		Repair of urethra injury	2	446
53515		Repair of urethra injury	2	446
53520		Repair of urethra defect	2	446
53605		Dilate urethra stricture	2	446
53665		Dilation of urethra	1	333
53850	A	Prostatic microwave thermotx	9	1339
54000	A	Slitting of prepuce	2	446
54001		Slitting of prepuce	2	446
54015		Drain penis lesion	4	630
54057		Laser surg, penis lesion(s)	1	333
54060		Excision of penis lesion(s)	1	333
54065		Destruction, penis lesion(s)	1	333
54100		Biopsy of penis	1	333
54105		Biopsy of penis	1	333
54110		Treatment of penis lesion	2	446
54111	A	Treat penis lesion, graft	2	446
54112	A	Treat penis lesion, graft	2	446
54115		Treatment of penis lesion	1	333
54120		Partial removal of penis	2	446
54125	D	Removal of penis	2	446
54150	A	Circumcision	1	333
54152		Circumcision	1	333
54160	A	Circumcision	2	446
54161		Circumcision	2	446
54162		Lysis penil circumcis lesion	2	446
54163		Repair of circumcision	2	446
54164		Frenulotomy of penis	2	446
54205		Treatment of penis lesion	4	630
54220		Treatment of penis lesion	1	333
54300		Revision of penis	3	510
54304	A	Revision of penis	3	510
54308	A	Reconstruction of urethra	3	510
54312	A	Reconstruction of urethra	3	510
54316	A	Reconstruction of urethra	3	510
54318	A	Reconstruction of urethra	3	510
54322	A	Reconstruction of urethra	3	510
54324	A	Reconstruction of urethra	3	510
54326	A	Reconstruction of urethra	3	510
54328	A	Revise penis/urethra	3	510
54340	A	Secondary urethral surgery	3	510
54344	A	Secondary urethral surgery	3	510
54348	A	Secondary urethral surgery	3	510
54352	A	Reconstruct urethra/penis	3	510
54360		Penis plastic surgery	3	510
54380	A	Repair penis	3	510
54385	A	Repair penis	3	510
54400	A	Insert semi-rigid prosthesis	3	510
54401	A	Insert self-contd prosthesis	3	510
54405	A	Insert multi-comp penis pros	3	510
54406	A	Remove multi-comp penis pros	3	510
54408	A	Repair multi-comp penis pros	3	510
54410	A	Remove/replace penis prosth	3	510
54415	A	Remove self-contd penis pros	3	510
54416	A	Remv/repl penis contain pros	3	510
54420		Revision of penis	4	630
54435		Revision of penis	4	630
54440		Repair of penis	4	630
54450		Preputial stretching	1	333
54500		Biopsy of testis	1	333
54505		Biopsy of testis	1	333
54512		Excise lesion testis	7	995
54520		Removal of testis	3	510
54522	A	Orchiectomy, partial	3	510
54530		Removal of testis	4	630
54550		Exploration for testis	4	630
54600		Reduce testis torsion	4	630
54620		Suspension of testis	3	510
54640		Suspension of testis	4	630
54660		Revision of testis	2	446
54670		Repair testis injury	3	510

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
54680		Relocation of testis(es)	3	510
54690	A*	Laparoscopy, orchiectomy	9	1339
54700		Drainage of scrotum	2	446
54800		Biopsy of epididymis	1	333
54820		Exploration of epididymis	1	333
54830		Remove epididymis lesion	3	510
54840		Remove epididymis lesion	4	630
54860		Removal of epididymis	3	510
54861		Removal of epididymis	4	630
54900		Fusion of spermatic ducts	4	630
54901		Fusion of spermatic ducts	4	630
55040		Removal of hydrocele	3	510
55041		Removal of hydroceles	5	717
55060		Repair of hydrocele	4	630
55100		Drainage of scrotum abscess	1	333
55110		Explore scrotum	2	446
55120		Removal of scrotum lesion	2	446
55150		Removal of scrotum	1	333
55175		Revision of scrotum	1	333
55180		Revision of scrotum	2	446
55200		Incision of sperm duct	2	446
55250	A	Removal of sperm duct(s)	2	446
55400		Repair of sperm duct	1	333
55500		Removal of hydrocele	3	510
55520		Removal of sperm cord lesion	4	630
55530		Revise spermatic cord veins	4	630
55535		Revise spermatic cord veins	4	630
55540		Revise hernia & sperm veins	5	717
55550	A	Laparo ligate spermatic vein	9	1339
55600	D	Incise sperm duct pouch	1	333
55605	D	Incise sperm duct pouch	1	333
55650	D	Remove sperm duct pouch	1	333
55680		Remove sperm pouch lesion	1	333
55700		Biopsy of prostate	2	446
55705		Biopsy of prostate	2	446
55720		Drainage of prostate abscess	1	333
55725	A	Drainage of prostate abscess	2	446
55859	A	Percut/needle insert, pros	9	1339
56405	D	I & D of vulva/perineum	2	446
56440		Surgery for vulva lesion	2	446
56441		Lysis of labial lesion(s)	1	333
56515		Destroy vulva lesion/s compl	3	510
56605	D	Biopsy of vulva/perineum	1	333
56620		Partial removal of vulva	5	717
56625		Complete removal of vulva	7	995
56700		Partial removal of hymen	1	333
56720		Incision of hymen	1	333
56740		Remove vagina gland lesion	3	510
56800		Repair of vagina	3	510
56810		Repair of perineum	5	717
57000		Exploration of vagina	1	333
57010		Drainage of pelvic abscess	2	446
57020		Drainage of pelvic fluid	2	446
57023	A*	I & d vag hematoma, non-ob	1	333
57065		Destroy vag lesions, complex	1	333
57105		Biopsy of vagina	2	446
57130		Remove vagina lesion	2	446
57135		Remove vagina lesion	2	446
57180		Treat vaginal bleeding	1	333
57200		Repair of vagina	1	333
57210		Repair vagina/perineum	2	446
57220		Revision of urethra	3	510
57230		Repair of urethral lesion	3	510
57240		Repair bladder & vagina	5	717
57250		Repair rectum & vagina	5	717
57260		Repair of vagina	5	717
57265		Extensive repair of vagina	7	995
57268		Repair of bowel bulge	3	510
57289	A	Repair bladder & vagina	5	717
57291	A	Construction of vagina	5	717
57300		Repair rectum-vagina fistula	3	510
57310	D	Repair urethrovaginal lesion	3	510

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
57311	D	Repair urethrovaginal lesion	4	630
57320	D	Repair bladder-vagina lesion	3	510
57400		Dilation of vagina	2	446
57410		Pelvic examination	2	446
57415	A	Remove vaginal foreign body	2	446
57513		Laser surgery of cervix	2	446
57520		Conization of cervix	2	446
57522		Conization of cervix	2	446
57530		Removal of cervix	3	510
57550		Removal of residual cervix	3	510
57556	A	Remove cervix, repair bowel	5	717
57700		Revision of cervix	1	333
57720		Revision of cervix	3	510
57800	D	Dilation of cervical canal	1	333
57820		D & c of residual cervix	3	510
58120		Dilation and curettage	2	446
58145		Removal of uterus lesion	5	717
58350	A	Reopen fallopian tube	3	510
58353		Endometr ablate, thermal	4	630
58545	A	Laparoscopic myomectomy	9	1339
58546	A*	Laparo-myomectomy, complex	9	1339
58550	A*	Laparo-asst vag hysterectomy	9	1339
58551	D	Laparoscopy, remove myoma	5	717
58555		Hysteroscopy, dx, sep proc	1	333
58558		Hysteroscopy, biopsy	3	510
58559		Hysteroscopy, lysis	2	446
58560	A*	Hysteroscopy, resect septum	3	510
58561		Hysteroscopy, remove myoma	3	510
58562	A*	Hysteroscopy, remove fb	3	510
58563		Hysteroscopy, ablation	4	630
58660		Laparoscopy, lysis	5	717
58661		Laparoscopy, remove adnexa	5	717
58662		Laparoscopy, excise lesions	5	717
58670		Laparoscopy, tubal cautery	3	510
58671		Laparoscopy, tubal block	3	510
58672		Laparoscopy, fimbrioplasty	5	717
58673		Laparoscopy, salpingostomy	5	717
58800		Drainage of ovarian cyst(s)	3	510
58820		Drain ovary abscess, open	3	510
58900		Biopsy of ovary(s)	3	510
59160	A	D & c after delivery	3	510
59320	A	Revision of cervix	1	333
59812	A	Treatment of miscarriage	5	717
59820	A	Care of miscarriage	5	717
59821	A	Treatment of miscarriage	5	717
59840	A	Abortion	5	717
59841	A	Abortion	5	717
59870	A	Evacuate mole of uterus	5	717
59871	A	Remove cerclage suture	5	717
60000		Drain thyroid/tongue cyst	1	333
60200		Remove thyroid lesion	2	446
60220	D	Partial removal of thyroid	2	446
60225	D	Partial removal of thyroid	3	510
60280		Remove thyroid duct lesion	4	630
60281		Remove thyroid duct lesion	4	630
61020		Remove brain cavity fluid	1	333
61026		Injection into brain canal	1	333
61050		Remove brain canal fluid	1	333
61055		Injection into brain canal	1	333
61070		Brain canal shunt procedure	1	333
61215		Insert brain-fluid device	3	510
61790		Treat trigeminal nerve	3	510
61791		Treat trigeminal tract	3	510
61885		Implant neurostim one array	2	446
61886	A*	Implant neurostim arrays	3	510
61888		Revise/remove neuroreceiver	1	333
62194		Replace/irrigate catheter	1	333
62225		Replace/irrigate catheter	1	333
62230		Replace/revise brain shunt	2	446
62256	D	Remove brain cavity shunt	2	446
62263		Lysis epidural adhesions	1	333
62268		Drain spinal cord cyst	1	333

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
62269		Needle biopsy, spinal cord	1	333
62270		Spinal fluid tap, diagnostic	1	333
62272		Drain cerebro spinal fluid	1	333
62273		Treat epidural spine lesion	1	333
62280		Treat spinal cord lesion	1	333
62281	A	Treat spinal cord lesion	1	333
62282		Treat spinal canal lesion	1	333
62287	A	Percutaneous discectomy	9	1339
62294		Injection into spinal artery	3	510
62310		Inject spine c/t	1	333
62311		Inject spine l/s (cd)	1	333
62318		Inject spine w/cath, c/t	1	333
62319		Inject spine w/cath l/s (cd)	1	333
62350		Implant spinal canal cath	2	446
62351	D	Implant spinal canal cath	2	446
62355	A	Remove spinal canal catheter	2	446
62360		Insert spine infusion device	2	446
62361		Implant spine infusion pump	2	446
62362		Implant spine infusion pump	2	446
62365		Remove spine infusion device	2	446
62367	D	Analyze spine infusion pump	2	446
62368	D	Analyze spine infusion pump	2	446
63600		Remove spinal cord lesion	2	446
63610		Stimulation of spinal cord	1	333
63650		Implant neuroelectrodes	2	446
63660		Revise/remove neuroelectrode	1	333
63685		Implant neuroreceiver	2	446
63688		Revise/remove neuroreceiver	1	333
63744		Revision of spinal shunt	3	510
63746		Removal of spinal shunt	2	446
64410		Injection for nerve block	1	333
64415		Injection for nerve block	1	333
64417		Injection for nerve block	1	333
64420		Injection for nerve block	1	333
64421		Injection for nerve block	1	333
64430		Injection for nerve block	1	333
64470		Inj paravertebral c/t	1	333
64472		Inj paravertebral c/t add-on	1	333
64475		Inj paravertebral l/s	1	333
64476		Inj paravertebral l/s add-on	1	333
64479		Inj foramen epidural c/t	1	333
64480		Inj foramen epidural add-on	1	333
64483		Inj foramen epidural l/s	1	333
64484		Inj foramen epidural add-on	1	333
64510		Injection for nerve block	1	333
64520		Injection for nerve block	1	333
64530		Injection for nerve block	1	333
64553	A	Implant neuroelectrodes	1	333
64573	A	Implant neuroelectrodes	1	333
64575		Implant neuroelectrodes	1	333
64577	A	Implant neuroelectrodes	1	333
64580	A	Implant neuroelectrodes	1	333
64585	A	Revise/remove neuroelectrode	1	333
64590		Implant neuroreceiver	2	446
64595		Revise/remove neuroreceiver	1	333
64600		Injection treatment of nerve	1	333
64605		Injection treatment of nerve	1	333
64610		Injection treatment of nerve	1	333
64620		Injection treatment of nerve	1	333
64622		Destr paravertebrl nerve l/s	1	333
64623		Destr paravertebral n add-on	1	333
64626		Destr paravertebrl nerve c/t	1	333
64627		Destr paravertebral n add-on	1	333
64630		Injection treatment of nerve	2	446
64680		Injection treatment of nerve	2	446
64702		Revise finger/toe nerve	1	333
64704		Revise hand/foot nerve	1	333
64708		Revise arm/leg nerve	2	446
64712		Revision of sciatic nerve	2	446
64713		Revision of arm nerve(s)	2	446
64714		Revise low back nerve(s)	2	446
64716		Revision of cranial nerve	3	510

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
64718		Revise ulnar nerve at elbow	2	446
64719		Revise ulnar nerve at wrist	2	446
64721		Carpal tunnel surgery	2	446
64722		Relieve pressure on nerve(s)	1	333
64726		Release foot/toe nerve	1	333
64727		Internal nerve revision	1	333
64732		Incision of brow nerve	2	446
64734		Incision of cheek nerve	2	446
64736		Incision of chin nerve	2	446
64738		Incision of jaw nerve	2	446
64740		Incision of tongue nerve	2	446
64742		Incision of facial nerve	2	446
64744		Incise nerve, back of head	2	446
64746		Incise diaphragm nerve	2	446
64771		Sever cranial nerve	2	446
64772		Incision of spinal nerve	2	446
64774		Remove skin nerve lesion	2	446
64776		Remove digit nerve lesion	3	510
64778		Digit nerve surgery add-on	2	446
64782		Remove limb nerve lesion	3	510
64783		Limb nerve surgery add-on	2	446
64784		Remove nerve lesion	3	510
64786		Remove sciatic nerve lesion	3	510
64787		Implant nerve end	2	446
64788		Remove skin nerve lesion	3	510
64790		Removal of nerve lesion	3	510
64792		Removal of nerve lesion	3	510
64795		Biopsy of nerve	2	446
64802		Remove sympathetic nerves	2	446
64821	A*	Remove sympathetic nerves	4	630
64831		Repair of digit nerve	4	630
64832		Repair nerve add-on	1	333
64834		Repair of hand or foot nerve	2	446
64835		Repair of hand or foot nerve	3	510
64836		Repair of hand or foot nerve	3	510
64837		Repair nerve add-on	1	333
64840		Repair of leg nerve	2	446
64856		Repair/transpose nerve	2	446
64857		Repair arm/leg nerve	2	446
64858		Repair sciatic nerve	2	446
64859		Nerve surgery	1	333
64861		Repair of arm nerves	3	510
64862		Repair of low back nerves	3	510
64864		Repair of facial nerve	3	510
64865		Repair of facial nerve	4	630
64870		Fusion of facial/other nerve	4	630
64872		Subsequent repair of nerve	2	446
64874		Repair & revise nerve add-on	3	510
64876		Repair nerve/shorten bone	3	510
64885	A	Nerve graft, head or neck	2	446
64886	A	Nerve graft, head or neck	2	446
64890		Nerve graft, hand or foot	2	446
64891		Nerve graft, hand or foot	2	446
64892		Nerve graft, arm or leg	2	446
64893		Nerve graft, arm or leg	2	446
64895		Nerve graft, hand or foot	3	510
64896		Nerve graft, hand or foot	3	510
64897		Nerve graft, arm or leg	3	510
64898		Nerve graft, arm or leg	3	510
64901		Nerve graft add-on	2	446
64902		Nerve graft add-on	2	446
64905		Nerve pedicle transfer	2	446
64907		Nerve pedicle transfer	1	333
65091		Revise eye	3	510
65093		Revise eye with implant	3	510
65101		Removal of eye	3	510
65103		Remove eye/insert implant	3	510
65105		Remove eye/attach implant	4	630
65110		Removal of eye	5	717
65112		Remove eye/revise socket	7	995
65114		Remove eye/revise socket	7	995
65130		Insert ocular implant	3	510

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
65135		Insert ocular implant	2	446
65140		Attach ocular implant	3	510
65150		Revise ocular implant	2	446
65155		Reinsert ocular implant	3	510
65175		Removal of ocular implant	1	333
65235		Remove foreign body from eye	2	446
65260		Remove foreign body from eye	3	510
65265		Remove foreign body from eye	4	630
65270		Repair of eye wound	2	446
65272		Repair of eye wound	2	446
65275		Repair of eye wound	4	630
65280		Repair of eye wound	4	630
65285		Repair of eye wound	4	630
65290		Repair of eye socket wound	3	510
65400		Removal of eye lesion	1	333
65410		Biopsy of cornea	2	446
65420		Removal of eye lesion	2	446
65426		Removal of eye lesion	5	717
65710		Corneal transplant	7	995
65730		Corneal transplant	7	995
65750		Corneal transplant	7	995
65755		Corneal transplant	7	995
65770		Revise cornea with implant	7	995
65772	A	Correction of astigmatism	4	630
65775	A	Correction of astigmatism	4	630
65800		Drainage of eye	1	333
65805		Drainage of eye	1	333
65810		Drainage of eye	3	510
65815		Drainage of eye	2	446
65850		Incision of eye	4	630
65865		Incise inner eye adhesions	1	333
65870		Incise inner eye adhesions	4	630
65875		Incise inner eye adhesions	4	630
65880		Incise inner eye adhesions	4	630
65900		Remove eye lesion	5	717
65920		Remove implant of eye	7	995
65930		Remove blood clot from eye	5	717
66020		Injection treatment of eye	1	333
66030		Injection treatment of eye	1	333
66130		Remove eye lesion	7	995
66150		Glaucoma surgery	4	630
66155		Glaucoma surgery	4	630
66160		Glaucoma surgery	2	446
66165		Glaucoma surgery	4	630
66170		Glaucoma surgery	4	630
66172		Incision of eye	4	630
66180		Implant eye shunt	5	717
66185		Revise eye shunt	2	446
66220		Repair eye lesion	3	510
66225		Repair/graft eye lesion	4	630
66250		Follow-up surgery of eye	2	446
66500		Incision of iris	1	333
66505		Incision of iris	1	333
66600		Remove iris and lesion	3	510
66605		Removal of iris	3	510
66625		Removal of iris	3	510
66630		Removal of iris	3	510
66635		Removal of iris	3	510
66680		Repair iris & ciliary body	3	510
66682		Repair iris & ciliary body	2	446
66700		Destruction, ciliary body	2	446
66710		Destruction, ciliary body	2	446
66720		Destruction, ciliary body	2	446
66740		Destruction, ciliary body	2	446
66821		After cataract laser surgery	2	446
66825	A	Reposition intraocular lens	4	630
66830		Removal of lens lesion	4	630
66840		Removal of lens material	4	630
66850		Removal of lens material	7	995
66852		Removal of lens material	4	630
66920		Extraction of lens	4	630
66930		Extraction of lens	5	717

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
66940		Extraction of lens	5	717
66982		Cataract surgery, complex	8	973
66983		Cataract surg w/iol, 1 stage	8	973
66984		Cataract surg w/iol, i stage	8	973
66985		Insert lens prosthesis	6	826
66986		Exchange lens prosthesis	6	826
67005		Partial removal of eye fluid	4	630
67010		Partial removal of eye fluid	4	630
67015		Release of eye fluid	1	333
67025		Replace eye fluid	1	333
67027	A	Implant eye drug system	4	630
67030		Incise inner eye strands	1	333
67031		Laser surgery, eye strands	2	446
67036		Removal of inner eye fluid	4	630
67038		Strip retinal membrane	5	717
67039		Laser treatment of retina	7	995
67040		Laser treatment of retina	7	995
67107		Repair detached retina	5	717
67108		Repair detached retina	7	995
67112		Rerepair detached retina	7	995
67115		Release encircling material	2	446
67120		Remove eye implant material	2	446
67121		Remove eye implant material	2	446
67141		Treatment of retina	2	446
67218		Treatment of retinal lesion	5	717
67227		Treatment of retinal lesion	1	333
67250		Reinforce eye wall	3	510
67255		Reinforce/graft eye wall	3	510
67311		Revise eye muscle	3	510
67312		Revise two eye muscles	4	630
67314		Revise eye muscle	4	630
67316		Revise two eye muscles	4	630
67318		Revise eye muscle(s)	4	630
67320		Revise eye muscle(s) add-on	4	630
67331		Eye surgery follow-up add-on	4	630
67332		Rerevise eye muscles add-on	4	630
67334	A	Revise eye muscle w/suture	4	630
67335	A	Eye suture during surgery	4	630
67340		Revise eye muscle add-on	4	630
67350		Biopsy eye muscle	1	333
67400		Explore/biopsy eye socket	3	510
67405		Explore/drain eye socket	4	630
67412		Explore/treat eye socket	5	717
67413		Explore/treat eye socket	5	717
67415		Aspiration, orbital contents	1	333
67420		Explore/treat eye socket	5	717
67430		Explore/treat eye socket	5	717
67440		Explore/drain eye socket	5	717
67450		Explore/biopsy eye socket	5	717
67550		Insert eye socket implant	4	630
67560		Revise eye socket implant	2	446
67715		Incision of eyelid fold	1	333
67808		Remove eyelid lesion(s)	2	446
67830		Revise eyelashes	2	446
67835		Revise eyelashes	2	446
67880		Revision of eyelid	3	510
67882		Revision of eyelid	3	510
67900	A	Repair brow defect	4	630
67901		Repair eyelid defect	5	717
67902		Repair eyelid defect	5	717
67903		Repair eyelid defect	4	630
67904		Repair eyelid defect	4	630
67906		Repair eyelid defect	5	717
67908		Repair eyelid defect	4	630
67909		Repair eyelid defect	4	630
67911		Revise eyelid defect	3	510
67914		Repair eyelid defect	3	510
67916		Repair eyelid defect	4	630
67917		Repair eyelid defect	4	630
67921		Repair eyelid defect	3	510
67923		Repair eyelid defect	4	630
67924		Repair eyelid defect	4	630

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
67935		Repair eyelid wound	2	446
67950		Revision of eyelid	2	446
67961		Revision of eyelid	3	510
67966		Revision of eyelid	3	510
67971		Reconstruction of eyelid	3	510
67973		Reconstruction of eyelid	3	510
67974		Reconstruction of eyelid	3	510
67975		Reconstruction of eyelid	3	510
68115	A	Remove eyelid lining lesion	2	446
68130		Remove eyelid lining lesion	2	446
68320		Revise/graft eyelid lining	4	630
68325		Revise/graft eyelid lining	4	630
68326		Revise/graft eyelid lining	4	630
68328		Revise/graft eyelid lining	4	630
68330		Revise eyelid lining	4	630
68335		Revise/graft eyelid lining	4	630
68340		Separate eyelid adhesions	4	630
68360		Revise eyelid lining	2	446
68362		Revise eyelid lining	2	446
68500		Removal of tear gland	3	510
68505		Partial removal, tear gland	3	510
68510		Biopsy of tear gland	1	333
68520		Removal of tear sac	3	510
68525		Biopsy of tear sac	1	333
68540		Remove tear gland lesion	3	510
68550		Remove tear gland lesion	3	510
68700		Repair tear ducts	2	446
68720		Create tear sac drain	4	630
68745		Create tear duct drain	4	630
68750		Create tear duct drain	4	630
68770	A	Close tear system fistula	4	630
68810		Probe nasolacrimal duct	1	333
68811		Probe nasolacrimal duct	2	446
68815		Probe nasolacrimal duct	2	446
69110		Remove external ear, partial	1	333
69120		Removal of external ear	2	446
69140		Remove ear canal lesion(s)	2	446
69145		Remove ear canal lesion(s)	2	446
69150		Extensive ear canal surgery	3	510
69205		Clear outer ear canal	1	333
69300	A	Revise external ear	3	510
69310		Rebuild outer ear canal	3	510
69320		Rebuild outer ear canal	7	995
69421		Incision of eardrum	3	510
69424	D	Remove ventilating tube	1	333
69436		Create eardrum opening	3	510
69440		Exploration of middle ear	3	510
69450		Eardrum revision	1	333
69501		Mastoidectomy	7	995
69502		Mastoidectomy	7	995
69505		Remove mastoid structures	7	995
69511		Extensive mastoid surgery	7	995
69530		Extensive mastoid surgery	7	995
69550		Remove ear lesion	5	717
69552		Remove ear lesion	7	995
69601		Mastoid surgery revision	7	995
69602		Mastoid surgery revision	7	995
69603		Mastoid surgery revision	7	995
69604		Mastoid surgery revision	7	995
69605		Mastoid surgery revision	7	995
69620		Repair of eardrum	2	446
69631		Repair eardrum structures	5	717
69632		Rebuild eardrum structures	5	717
69633		Rebuild eardrum structures	5	717
69635		Repair eardrum structures	7	995
69636		Rebuild eardrum structures	7	995
69637		Rebuild eardrum structures	7	995
69641		Revise middle ear & mastoid	7	995
69642		Revise middle ear & mastoid	7	995
69643		Revise middle ear & mastoid	7	995
69644		Revise middle ear & mastoid	7	995
69645		Revise middle ear & mastoid	7	995

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
69646		Revise middle ear & mastoid	7	995
69650		Release middle ear bone	7	995
69660		Revise middle ear bone	5	717
69661		Revise middle ear bone	5	717
69662		Revise middle ear bone	5	717
69666		Repair middle ear structures	4	630
69667		Repair middle ear structures	4	630
69670		Remove mastoid air cells	3	510
69676		Remove middle ear nerve	3	510
69700		Close mastoid fistula	3	510
69710	D	Implant/replace hearing aid	3	510
69711		Remove/repair hearing aid	1	333
69714	A*	Implant temple bone w/stimul	9	1339
69715	A*	Temple bne implnt w/stimulat	9	1339
69717	A*	Temple bone implant revision	9	1339
69718	A*	Revise temple bone implant	9	1339
69720		Release facial nerve	5	717
69725		Release facial nerve	5	717
69740		Repair facial nerve	5	717
69745		Repair facial nerve	5	717
69801		Incise inner ear	5	717
69802		Incise inner ear	7	995
69805		Explore inner ear	7	995
69806		Explore inner ear	7	995
69820		Establish inner ear window	5	717
69840		Revise inner ear window	5	717
69905		Remove inner ear	7	995
69910		Remove inner ear & mastoid	7	995
69915		Incise inner ear nerve	7	995
69930		Implant cochlear device	7	995
G0105		Colorectal scrn; hi risk ind	2	446
G0121		Colon ca scrn; barium enema	2	446
G0260	A*	Inj for sacroiliac jt anesth	1	333

"A"=Addition. "A*"=For Comment. "D"=Deletion.

Note: CPT codes are copyright 2002 American Medical Association. All Rights Reserved.

[FR Doc. 03-7236 Filed 3-27-03; 8:45 am]

BILLING CODE 4120-01-P



Federal Register

**Friday,
March 28, 2003**

Part III

The President

**Executive Order 13292—Further
Amendment to Executive Order 12958, as
Amended, Classified National Security
Information**

Presidential Documents

Title 3—

Executive Order 13292 of March 25, 2003

The President

Further Amendment to Executive Order 12958, as Amended, Classified National Security Information

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to further amend Executive Order 12958, as amended, it is hereby ordered that Executive Order 12958 is amended to read as follows:

“Classified National Security Information

This order prescribes a uniform system for classifying, safeguarding, and declassifying national security information, including information relating to defense against transnational terrorism. Our democratic principles require that the American people be informed of the activities of their Government. Also, our Nation’s progress depends on the free flow of information. Nevertheless, throughout our history, the national defense has required that certain information be maintained in confidence in order to protect our citizens, our democratic institutions, our homeland security, and our interactions with foreign nations. Protecting information critical to our Nation’s security remains a priority.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

PART 1—ORIGINAL CLASSIFICATION

Sec. 1.1. Classification Standards. (a) Information may be originally classified under the terms of this order only if all of the following conditions are met:

- (1) an original classification authority is classifying the information;
- (2) the information is owned by, produced by or for, or is under the control of the United States Government;
- (3) the information falls within one or more of the categories of information listed in section 1.4 of this order; and
- (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

(b) Classified information shall not be declassified automatically as a result of any unauthorized disclosure of identical or similar information.

(c) The unauthorized disclosure of foreign government information is presumed to cause damage to the national security.

Sec. 1.2. Classification Levels. (a) Information may be classified at one of the following three levels:

- (1) “Top Secret” shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.
- (2) “Secret” shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the

national security that the original classification authority is able to identify or describe.

(3) "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe.

(b) Except as otherwise provided by statute, no other terms shall be used to identify United States classified information.

Sec. 1.3. Classification Authority. (a) The authority to classify information originally may be exercised only by:

(1) the President and, in the performance of executive duties, the Vice President;

(2) agency heads and officials designated by the President in the **Federal Register**; and

(3) United States Government officials delegated this authority pursuant to paragraph (c) of this section.

(b) Officials authorized to classify information at a specified level are also authorized to classify information at a lower level.

(c) Delegation of original classification authority.

(1) Delegations of original classification authority shall be limited to the minimum required to administer this order. Agency heads are responsible for ensuring that designated subordinate officials have a demonstrable and continuing need to exercise this authority.

(2) "Top Secret" original classification authority may be delegated only by the President; in the performance of executive duties, the Vice President; or an agency head or official designated pursuant to paragraph (a)(2) of this section.

(3) "Secret" or "Confidential" original classification authority may be delegated only by the President; in the performance of executive duties, the Vice President; or an agency head or official designated pursuant to paragraph (a)(2) of this section; or the senior agency official described in section 5.4(d) of this order, provided that official has been delegated "Top Secret" original classification authority by the agency head.

(4) Each delegation of original classification authority shall be in writing and the authority shall not be redelegated except as provided in this order. Each delegation shall identify the official by name or position title.

(d) Original classification authorities must receive training in original classification as provided in this order and its implementing directives. Such training must include instruction on the proper safeguarding of classified information and of the criminal, civil, and administrative sanctions that may be brought against an individual who fails to protect classified information from unauthorized disclosure.

(e) Exceptional cases. When an employee, government contractor, licensee, certificate holder, or grantee of an agency who does not have original classification authority originates information believed by that person to require classification, the information shall be protected in a manner consistent with this order and its implementing directives. The information shall be transmitted promptly as provided under this order or its implementing directives to the agency that has appropriate subject matter interest and classification authority with respect to this information. That agency shall decide within 30 days whether to classify this information. If it is not clear which agency has classification responsibility for this information, it shall be sent to the Director of the Information Security Oversight Office. The Director shall determine the agency having primary subject matter interest and forward the information, with appropriate recommendations, to that agency for a classification determination.

Sec. 1.4. Classification Categories. Information shall not be considered for classification unless it concerns:

- (a) military plans, weapons systems, or operations;
- (b) foreign government information;
- (c) intelligence activities (including special activities), intelligence sources or methods, or cryptology;
- (d) foreign relations or foreign activities of the United States, including confidential sources;
- (e) scientific, technological, or economic matters relating to the national security, which includes defense against transnational terrorism;
- (f) United States Government programs for safeguarding nuclear materials or facilities;
- (g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security, which includes defense against transnational terrorism; or
- (h) weapons of mass destruction.

Sec. 1.5. Duration of Classification. (a) At the time of original classification, the original classification authority shall attempt to establish a specific date or event for declassification based upon the duration of the national security sensitivity of the information. Upon reaching the date or event, the information shall be automatically declassified. The date or event shall not exceed the time frame established in paragraph (b) of this section.

(b) If the original classification authority cannot determine an earlier specific date or event for declassification, information shall be marked for declassification 10 years from the date of the original decision, unless the original classification authority otherwise determines that the sensitivity of the information requires that it shall be marked for declassification for up to 25 years from the date of the original decision. All information classified under this section shall be subject to section 3.3 of this order if it is contained in records of permanent historical value under title 44, United States Code.

(c) An original classification authority may extend the duration of classification, change the level of classification, or reclassify specific information only when the standards and procedures for classifying information under this order are followed.

(d) Information marked for an indefinite duration of classification under predecessor orders, for example, marked as "Originating Agency's Determination Required," or information classified under predecessor orders that contains no declassification instructions shall be declassified in accordance with part 3 of this order.

Sec. 1.6. Identification and Markings. (a) At the time of original classification, the following shall appear on the face of each classified document, or shall be applied to other classified media in an appropriate manner:

- (1) one of the three classification levels defined in section 1.2 of this order;
- (2) the identity, by name or personal identifier and position, of the original classification authority;
- (3) the agency and office of origin, if not otherwise evident;
- (4) declassification instructions, which shall indicate one of the following:
 - (A) the date or event for declassification, as prescribed in section 1.5(a) or section 1.5(c);
 - (B) the date that is 10 years from the date of original classification, as prescribed in section 1.5(b); or
 - (C) the date that is up to 25 years from the date of original classification, as prescribed in section 1.5 (b); and
- (5) a concise reason for classification that, at a minimum, cites the applicable classification categories in section 1.4 of this order.

(b) Specific information described in paragraph (a) of this section may be excluded if it would reveal additional classified information.

(c) With respect to each classified document, the agency originating the document shall, by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are unclassified. In accordance with standards prescribed in directives issued under this order, the Director of the Information Security Oversight Office may grant waivers of this requirement. The Director shall revoke any waiver upon a finding of abuse.

(d) Markings implementing the provisions of this order, including abbreviations and requirements to safeguard classified working papers, shall conform to the standards prescribed in implementing directives issued pursuant to this order.

(e) Foreign government information shall retain its original classification markings or shall be assigned a U.S. classification that provides a degree of protection at least equivalent to that required by the entity that furnished the information. Foreign government information retaining its original classification markings need not be assigned a U.S. classification marking provided that the responsible agency determines that the foreign government markings are adequate to meet the purposes served by U.S. classification markings.

(f) Information assigned a level of classification under this or predecessor orders shall be considered as classified at that level of classification despite the omission of other required markings. Whenever such information is used in the derivative classification process or is reviewed for possible declassification, holders of such information shall coordinate with an appropriate classification authority for the application of omitted markings.

(g) The classification authority shall, whenever practicable, use a classified addendum whenever classified information constitutes a small portion of an otherwise unclassified document.

(h) Prior to public release, all declassified records shall be appropriately marked to reflect their declassification.

Sec. 1.7. Classification Prohibitions and Limitations.

(a) In no case shall information be classified in order to:

- (1) conceal violations of law, inefficiency, or administrative error;
- (2) prevent embarrassment to a person, organization, or agency;
- (3) restrain competition; or

(4) prevent or delay the release of information that does not require protection in the interest of the national security.

(b) Basic scientific research information not clearly related to the national security shall not be classified.

(c) Information may be reclassified after declassification and release to the public under proper authority only in accordance with the following conditions:

- (1) the reclassification action is taken under the personal authority of the agency head or deputy agency head, who determines in writing that the reclassification of the information is necessary in the interest of the national security;
- (2) the information may be reasonably recovered; and
- (3) the reclassification action is reported promptly to the Director of the Information Security Oversight Office.

(d) Information that has not previously been disclosed to the public under proper authority may be classified or reclassified after an agency has received a request for it under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of section 3.5 of this order only if such classification meets the requirements of this order and is accomplished on a document-by-document basis with

the personal participation or under the direction of the agency head, the deputy agency head, or the senior agency official designated under section 5.4 of this order.

(e) Compilations of items of information that are individually unclassified may be classified if the compiled information reveals an additional association or relationship that: (1) meets the standards for classification under this order; and (2) is not otherwise revealed in the individual items of information. As used in this order, "compilation" means an aggregation of pre-existing unclassified items of information.

Sec. 1.8. Classification Challenges. (a) Authorized holders of information who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information in accordance with agency procedures established under paragraph (b) of this section.

(b) In accordance with implementing directives issued pursuant to this order, an agency head or senior agency official shall establish procedures under which authorized holders of information are encouraged and expected to challenge the classification of information that they believe is improperly classified or unclassified. These procedures shall ensure that:

- (1) individuals are not subject to retribution for bringing such actions;
- (2) an opportunity is provided for review by an impartial official or panel; and
- (3) individuals are advised of their right to appeal agency decisions to the Interagency Security Classification Appeals Panel (Panel) established by section 5.3 of this order.

PART 2—DERIVATIVE CLASSIFICATION

Sec. 2.1. Use of Derivative Classification. (a) Persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority.

(b) Persons who apply derivative classification markings shall:

- (1) observe and respect original classification decisions; and
- (2) carry forward to any newly created documents the pertinent classification markings. For information derivatively classified based on multiple sources, the derivative classifier shall carry forward:
 - (A) the date or event for declassification that corresponds to the longest period of classification among the sources; and
 - (B) a listing of these sources on or attached to the official file or record copy.

Sec. 2.2. Classification Guides. (a) Agencies with original classification authority shall prepare classification guides to facilitate the proper and uniform derivative classification of information. These guides shall conform to standards contained in directives issued under this order.

(b) Each guide shall be approved personally and in writing by an official who:

- (1) has program or supervisory responsibility over the information or is the senior agency official; and
- (2) is authorized to classify information originally at the highest level of classification prescribed in the guide.

(c) Agencies shall establish procedures to ensure that classification guides are reviewed and updated as provided in directives issued under this order.

PART 3—DECLASSIFICATION AND DOWNGRADING

Sec. 3.1. Authority for Declassification. (a) Information shall be declassified as soon as it no longer meets the standards for classification under this order.

(b) It is presumed that information that continues to meet the classification requirements under this order requires continued protection. In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the agency head or the senior agency official. That official will determine, as an exercise of discretion, whether the public interest in disclosure outweighs the damage to the national security that might reasonably be expected from disclosure. This provision does not:

(1) amplify or modify the substantive criteria or procedures for classification; or

(2) create any substantive or procedural rights subject to judicial review.

(c) If the Director of the Information Security Oversight Office determines that information is classified in violation of this order, the Director may require the information to be declassified by the agency that originated the classification. Any such decision by the Director may be appealed to the President through the Assistant to the President for National Security Affairs. The information shall remain classified pending a prompt decision on the appeal.

(d) The provisions of this section shall also apply to agencies that, under the terms of this order, do not have original classification authority, but had such authority under predecessor orders.

Sec. 3.2. *Transferred Records.* (a) In the case of classified records transferred in conjunction with a transfer of functions, and not merely for storage purposes, the receiving agency shall be deemed to be the originating agency for purposes of this order.

(b) In the case of classified records that are not officially transferred as described in paragraph (a) of this section, but that originated in an agency that has ceased to exist and for which there is no successor agency, each agency in possession of such records shall be deemed to be the originating agency for purposes of this order. Such records may be declassified or downgraded by the agency in possession after consultation with any other agency that has an interest in the subject matter of the records.

(c) Classified records accessioned into the National Archives and Records Administration (National Archives) as of the effective date of this order shall be declassified or downgraded by the Archivist of the United States (Archivist) in accordance with this order, the directives issued pursuant to this order, agency declassification guides, and any existing procedural agreement between the Archivist and the relevant agency head.

(d) The originating agency shall take all reasonable steps to declassify classified information contained in records determined to have permanent historical value before they are accessioned into the National Archives. However, the Archivist may require that classified records be accessioned into the National Archives when necessary to comply with the provisions of the Federal Records Act. This provision does not apply to records being transferred to the Archivist pursuant to section 2203 of title 44, United States Code, or records for which the National Archives serves as the custodian of the records of an agency or organization that has gone out of existence.

(e) To the extent practicable, agencies shall adopt a system of records management that will facilitate the public release of documents at the time such documents are declassified pursuant to the provisions for automatic declassification in section 3.3 of this order.

Sec. 3.3. *Automatic Declassification.* (a) Subject to paragraphs (b)–(e) of this section, on December 31, 2006, all classified records that (1) are more than 25 years old and (2) have been determined to have permanent historical value under title 44, United States Code, shall be automatically declassified whether or not the records have been reviewed. Subsequently, all classified records shall be automatically declassified on December 31 of the year

that is 25 years from the date of its original classification, except as provided in paragraphs (b)–(e) of this section.

(b) An agency head may exempt from automatic declassification under paragraph (a) of this section specific information, the release of which could be expected to:

- (1) reveal the identity of a confidential human source, or a human intelligence source, or reveal information about the application of an intelligence source or method;
- (2) reveal information that would assist in the development or use of weapons of mass destruction;
- (3) reveal information that would impair U.S. cryptologic systems or activities;
- (4) reveal information that would impair the application of state of the art technology within a U.S. weapon system;
- (5) reveal actual U.S. military war plans that remain in effect;
- (6) reveal information, including foreign government information, that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;
- (7) reveal information that would clearly and demonstrably impair the current ability of United States Government officials to protect the President, Vice President, and other protectees for whom protection services, in the interest of the national security, are authorized;
- (8) reveal information that would seriously and demonstrably impair current national security emergency preparedness plans or reveal current vulnerabilities of systems, installations, infrastructures, or projects relating to the national security; or
- (9) violate a statute, treaty, or international agreement.

(c) An agency head shall notify the President through the Assistant to the President for National Security Affairs of any specific file series of records for which a review or assessment has determined that the information within that file series almost invariably falls within one or more of the exemption categories listed in paragraph (b) of this section and which the agency proposes to exempt from automatic declassification. The notification shall include:

- (1) a description of the file series;
- (2) an explanation of why the information within the file series is almost invariably exempt from automatic declassification and why the information must remain classified for a longer period of time; and
- (3) except for the identity of a confidential human source or a human intelligence source, as provided in paragraph (b) of this section, a specific date or event for declassification of the information. The President may direct the agency head not to exempt the file series or to declassify the information within that series at an earlier date than recommended. File series exemptions previously approved by the President shall remain valid without any additional agency action.

(d) At least 180 days before information is automatically declassified under this section, an agency head or senior agency official shall notify the Director of the Information Security Oversight Office, serving as Executive Secretary of the Panel, of any specific information beyond that included in a notification to the President under paragraph (c) of this section that the agency proposes to exempt from automatic declassification. The notification shall include:

- (1) a description of the information, either by reference to information in specific records or in the form of a declassification guide;

(2) an explanation of why the information is exempt from automatic declassification and must remain classified for a longer period of time; and

(3) except for the identity of a confidential human source or a human intelligence source, as provided in paragraph (b) of this section, a specific date or event for declassification of the information. The Panel may direct the agency not to exempt the information or to declassify it at an earlier date than recommended. The agency head may appeal such a decision to the President through the Assistant to the President for National Security Affairs. The information will remain classified while such an appeal is pending.

(e) The following provisions shall apply to the onset of automatic declassification:

(1) Classified records within an integral file block, as defined in this order, that are otherwise subject to automatic declassification under this section shall not be automatically declassified until December 31 of the year that is 25 years from the date of the most recent record within the file block.

(2) By notification to the Director of the Information Security Oversight Office, before the records are subject to automatic declassification, an agency head or senior agency official designated under section 5.4 of this order may delay automatic declassification for up to 5 additional years for classified information contained in microforms, motion pictures, audiotapes, videotapes, or comparable media that make a review for possible declassification exemptions more difficult or costly.

(3) By notification to the Director of the Information Security Oversight Office, before the records are subject to automatic declassification, an agency head or senior agency official designated under section 5.4 of this order may delay automatic declassification for up to 3 years for classified records that have been referred or transferred to that agency by another agency less than 3 years before automatic declassification would otherwise be required.

(4) By notification to the Director of the Information Security Oversight Office, an agency head or senior agency official designated under section 5.4 of this order may delay automatic declassification for up to 3 years from the date of discovery of classified records that were inadvertently not reviewed prior to the effective date of automatic declassification.

(f) Information exempted from automatic declassification under this section shall remain subject to the mandatory and systematic declassification review provisions of this order.

(g) The Secretary of State shall determine when the United States should commence negotiations with the appropriate officials of a foreign government or international organization of governments to modify any treaty or international agreement that requires the classification of information contained in records affected by this section for a period longer than 25 years from the date of its creation, unless the treaty or international agreement pertains to information that may otherwise remain classified beyond 25 years under this section.

(h) Records containing information that originated with other agencies or the disclosure of which would affect the interests or activities of other agencies shall be referred for review to those agencies and the information of concern shall be subject to automatic declassification only by those agencies, consistent with the provisions of subparagraphs (e)(3) and (e)(4) of this section.

Sec. 3.4. Systematic Declassification Review. (a) Each agency that has originated classified information under this order or its predecessors shall establish and conduct a program for systematic declassification review. This program shall apply to records of permanent historical value exempted from automatic declassification under section 3.3 of this order. Agencies

shall prioritize the systematic review of records based upon the degree of researcher interest and the likelihood of declassification upon review.

(b) The Archivist shall conduct a systematic declassification review program for classified records: (1) accessioned into the National Archives as of the effective date of this order; (2) transferred to the Archivist pursuant to section 2203 of title 44, United States Code; and (3) for which the National Archives serves as the custodian for an agency or organization that has gone out of existence. This program shall apply to pertinent records no later than 25 years from the date of their creation. The Archivist shall establish priorities for the systematic review of these records based upon the degree of researcher interest and the likelihood of declassification upon review. These records shall be reviewed in accordance with the standards of this order, its implementing directives, and declassification guides provided to the Archivist by each agency that originated the records. The Director of the Information Security Oversight Office shall ensure that agencies provide the Archivist with adequate and current declassification guides.

(c) After consultation with affected agencies, the Secretary of Defense may establish special procedures for systematic review for declassification of classified cryptologic information, and the Director of Central Intelligence may establish special procedures for systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods.

Sec. 3.5. Mandatory Declassification Review. (a) Except as provided in paragraph (b) of this section, all information classified under this order or predecessor orders shall be subject to a review for declassification by the originating agency if:

(1) the request for a review describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort;

(2) the information is not exempted from search and review under sections 105C, 105D, or 701 of the National Security Act of 1947 (50 U.S.C. 403–5c, 403–5e, and 431); and

(3) the information has not been reviewed for declassification within the past 2 years. If the agency has reviewed the information within the past 2 years, or the information is the subject of pending litigation, the agency shall inform the requester of this fact and of the requester's appeal rights.

(b) Information originated by:

(1) the incumbent President or, in the performance of executive duties, the incumbent Vice President;

(2) the incumbent President's White House Staff or, in the performance of executive duties, the incumbent Vice President's Staff;

(3) committees, commissions, or boards appointed by the incumbent President; or

(4) other entities within the Executive Office of the President that solely advise and assist the incumbent President is exempted from the provisions of paragraph (a) of this section. However, the Archivist shall have the authority to review, downgrade, and declassify papers or records of former Presidents under the control of the Archivist pursuant to sections 2107, 2111, 2111 note, or 2203 of title 44, United States Code. Review procedures developed by the Archivist shall provide for consultation with agencies having primary subject matter interest and shall be consistent with the provisions of applicable laws or lawful agreements that pertain to the respective Presidential papers or records. Agencies with primary subject matter interest shall be notified promptly of the Archivist's decision. Any final decision by the Archivist may be appealed by the requester or an agency to the Panel. The information shall remain classified pending a prompt decision on the appeal.

(c) Agencies conducting a mandatory review for declassification shall declassify information that no longer meets the standards for classification

under this order. They shall release this information unless withholding is otherwise authorized and warranted under applicable law.

(d) In accordance with directives issued pursuant to this order, agency heads shall develop procedures to process requests for the mandatory review of classified information. These procedures shall apply to information classified under this or predecessor orders. They also shall provide a means for administratively appealing a denial of a mandatory review request, and for notifying the requester of the right to appeal a final agency decision to the Panel.

(e) After consultation with affected agencies, the Secretary of Defense shall develop special procedures for the review of cryptologic information; the Director of Central Intelligence shall develop special procedures for the review of information pertaining to intelligence activities (including special activities), or intelligence sources or methods; and the Archivist shall develop special procedures for the review of information accessioned into the National Archives.

Sec. 3.6. *Processing Requests and Reviews.* In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of this order, or pursuant to the automatic declassification or systematic review provisions of this order:

(a) An agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors.

(b) When an agency receives any request for documents in its custody that contain information that was originally classified by another agency, or comes across such documents in the process of the automatic declassification or systematic review provisions of this order, it shall refer copies of any request and the pertinent documents to the originating agency for processing, and may, after consultation with the originating agency, inform any requester of the referral unless such association is itself classified under this order or its predecessors. In cases in which the originating agency determines in writing that a response under paragraph (a) of this section is required, the referring agency shall respond to the requester in accordance with that paragraph.

Sec. 3.7. *Declassification Database.* (a) The Director of the Information Security Oversight Office, in conjunction with those agencies that originate classified information, shall coordinate the linkage and effective utilization of existing agency databases of records that have been declassified and publicly released.

(b) Agency heads shall fully cooperate with the Director of the Information Security Oversight Office in these efforts.

PART 4—SAFEGUARDING

Sec. 4.1. *General Restrictions on Access.* (a) A person may have access to classified information provided that:

- (1) a favorable determination of eligibility for access has been made by an agency head or the agency head's designee;
- (2) the person has signed an approved nondisclosure agreement; and
- (3) the person has a need-to-know the information.

(b) Every person who has met the standards for access to classified information in paragraph (a) of this section shall receive contemporaneous training on the proper safeguarding of classified information and on the criminal, civil, and administrative sanctions that may be imposed on an individual who fails to protect classified information from unauthorized disclosure.

(c) Classified information shall remain under the control of the originating agency or its successor in function. An agency shall not disclose information originally classified by another agency without its authorization. An official or employee leaving agency service may not remove classified information from the agency's control.

(d) Classified information may not be removed from official premises without proper authorization.

(e) Persons authorized to disseminate classified information outside the executive branch shall ensure the protection of the information in a manner equivalent to that provided within the executive branch.

(f) Consistent with law, directives, and regulation, an agency head or senior agency official shall establish uniform procedures to ensure that automated information systems, including networks and telecommunications systems, that collect, create, communicate, compute, disseminate, process, or store classified information have controls that:

- (1) prevent access by unauthorized persons; and
- (2) ensure the integrity of the information.

(g) Consistent with law, directives, and regulation, each agency head or senior agency official shall establish controls to ensure that classified information is used, processed, stored, reproduced, transmitted, and destroyed under conditions that provide adequate protection and prevent access by unauthorized persons.

(h) Consistent with directives issued pursuant to this order, an agency shall safeguard foreign government information under standards that provide a degree of protection at least equivalent to that required by the government or international organization of governments that furnished the information. When adequate to achieve equivalency, these standards may be less restrictive than the safeguarding standards that ordinarily apply to United States "Confidential" information, including modified handling and transmission and allowing access to individuals with a need-to-know who have not otherwise been cleared for access to classified information or executed an approved nondisclosure agreement.

(i) Except as otherwise provided by statute, this order, directives implementing this order, or by direction of the President, classified information originating in one agency shall not be disseminated outside any other agency to which it has been made available without the consent of the originating agency. An agency head or senior agency official may waive this requirement for specific information originated within that agency. For purposes of this section, the Department of Defense shall be considered one agency. Prior consent is not required when referring records for declassification review that contain information originating in several agencies.

Sec. 4.2. Distribution Controls. (a) Each agency shall establish controls over the distribution of classified information to ensure that it is distributed only to organizations or individuals eligible for access and with a need-to-know the information.

(b) In an emergency, when necessary to respond to an imminent threat to life or in defense of the homeland, the agency head or any designee may authorize the disclosure of classified information to an individual or individuals who are otherwise not eligible for access. Such actions shall be taken only in accordance with the directives implementing this order and any procedures issued by agencies governing the classified information, which shall be designed to minimize the classified information that is disclosed under these circumstances and the number of individuals who receive it. Information disclosed under this provision or implementing directives and procedures shall not be deemed declassified as a result of such disclosure or subsequent use by a recipient. Such disclosures shall be reported promptly to the originator of the classified information. For purposes of this section, the Director of Central Intelligence may issue an implementing directive governing the emergency disclosure of classified intelligence information.

(c) Each agency shall update, at least annually, the automatic, routine, or recurring distribution of classified information that they distribute. Recipients shall cooperate fully with distributors who are updating distribution lists and shall notify distributors whenever a relevant change in status occurs.

Sec. 4.3. *Special Access Programs.* (a) Establishment of special access programs. Unless otherwise authorized by the President, only the Secretaries of State, Defense, and Energy, and the Director of Central Intelligence, or the principal deputy of each, may create a special access program. For special access programs pertaining to intelligence activities (including special activities, but not including military operational, strategic, and tactical programs), or intelligence sources or methods, this function shall be exercised by the Director of Central Intelligence. These officials shall keep the number of these programs at an absolute minimum, and shall establish them only when the program is required by statute or upon a specific finding that:

(1) the vulnerability of, or threat to, specific information is exceptional; and

(2) the normal criteria for determining eligibility for access applicable to information classified at the same level are not deemed sufficient to protect the information from unauthorized disclosure.

(b) Requirements and limitations. (1) Special access programs shall be limited to programs in which the number of persons who will have access ordinarily will be reasonably small and commensurate with the objective of providing enhanced protection for the information involved.

(2) Each agency head shall establish and maintain a system of accounting for special access programs consistent with directives issued pursuant to this order.

(3) Special access programs shall be subject to the oversight program established under section 5.4(d) of this order. In addition, the Director of the Information Security Oversight Office shall be afforded access to these programs, in accordance with the security requirements of each program, in order to perform the functions assigned to the Information Security Oversight Office under this order. An agency head may limit access to a special access program to the Director and no more than one other employee of the Information Security Oversight Office, or, for special access programs that are extraordinarily sensitive and vulnerable, to the Director only.

(4) The agency head or principal deputy shall review annually each special access program to determine whether it continues to meet the requirements of this order.

(5) Upon request, an agency head shall brief the Assistant to the President for National Security Affairs, or a designee, on any or all of the agency's special access programs.

(c) Nothing in this order shall supersede any requirement made by or under 10 U.S.C. 119.

Sec. 4.4. *Access by Historical Researchers and Certain Former Government Personnel.* (a) The requirement in section 4.1(a)(3) of this order that access to classified information may be granted only to individuals who have a need-to-know the information may be waived for persons who:

(1) are engaged in historical research projects;

(2) previously have occupied policy-making positions to which they were appointed by the President under section 105(a)(2)(A) of title 3, United States Code, or the Vice President under 106(a)(1)(A) of title 3, United States Code; or

(3) served as President or Vice President.

(b) Waivers under this section may be granted only if the agency head or senior agency official of the originating agency:

(1) determines in writing that access is consistent with the interest of the national security;

(2) takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with this order; and

(3) limits the access granted to former Presidential appointees and Vice Presidential appointees to items that the person originated, reviewed, signed, or received while serving as a Presidential appointee or a Vice Presidential appointee.

PART 5—IMPLEMENTATION AND REVIEW

Sec. 5.1. Program Direction. (a) The Director of the Information Security Oversight Office, under the direction of the Archivist and in consultation with the Assistant to the President for National Security Affairs, shall issue such directives as are necessary to implement this order. These directives shall be binding upon the agencies. Directives issued by the Director of the Information Security Oversight Office shall establish standards for:

- (1) classification and marking principles;
- (2) safeguarding classified information, which shall pertain to the handling, storage, distribution, transmittal, and destruction of and accounting for classified information;
- (3) agency security education and training programs;
- (4) agency self-inspection programs; and
- (5) classification and declassification guides.

(b) The Archivist shall delegate the implementation and monitoring functions of this program to the Director of the Information Security Oversight Office.

Sec. 5.2. Information Security Oversight Office. (a) There is established within the National Archives an Information Security Oversight Office. The Archivist shall appoint the Director of the Information Security Oversight Office, subject to the approval of the President.

(b) Under the direction of the Archivist, acting in consultation with the Assistant to the President for National Security Affairs, the Director of the Information Security Oversight Office shall:

- (1) develop directives for the implementation of this order;
- (2) oversee agency actions to ensure compliance with this order and its implementing directives;
- (3) review and approve agency implementing regulations and agency guides for systematic declassification review prior to their issuance by the agency;
- (4) have the authority to conduct on-site reviews of each agency's program established under this order, and to require of each agency those reports, information, and other cooperation that may be necessary to fulfill its responsibilities. If granting access to specific categories of classified information would pose an exceptional national security risk, the affected agency head or the senior agency official shall submit a written justification recommending the denial of access to the President through the Assistant to the President for National Security Affairs within 60 days of the request for access. Access shall be denied pending the response;
- (5) review requests for original classification authority from agencies or officials not granted original classification authority and, if deemed appropriate, recommend Presidential approval through the Assistant to the President for National Security Affairs;
- (6) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the program established under this order;
- (7) have the authority to prescribe, after consultation with affected agencies, standardization of forms or procedures that will promote the implementation of the program established under this order;
- (8) report at least annually to the President on the implementation of this order; and
- (9) convene and chair interagency meetings to discuss matters pertaining to the program established by this order.

Sec. 5.3. Interagency Security Classification Appeals Panel.

(a) Establishment and administration.

(1) There is established an Interagency Security Classification Appeals Panel. The Departments of State, Defense, and Justice, the Central Intelligence Agency, the National Archives, and the Assistant to the President for National Security Affairs shall each be represented by a senior-level representative who is a full-time or permanent part-time Federal officer or employee designated to serve as a member of the Panel by the respective agency head. The President shall select the Chair of the Panel from among the Panel members.

(2) A vacancy on the Panel shall be filled as quickly as possible as provided in paragraph (a)(1) of this section.

(3) The Director of the Information Security Oversight Office shall serve as the Executive Secretary. The staff of the Information Security Oversight Office shall provide program and administrative support for the Panel.

(4) The members and staff of the Panel shall be required to meet eligibility for access standards in order to fulfill the Panel's functions.

(5) The Panel shall meet at the call of the Chair. The Chair shall schedule meetings as may be necessary for the Panel to fulfill its functions in a timely manner.

(6) The Information Security Oversight Office shall include in its reports to the President a summary of the Panel's activities.

(b) Functions. The Panel shall:

(1) decide on appeals by persons who have filed classification challenges under section 1.8 of this order;

(2) approve, deny, or amend agency exemptions from automatic declassification as provided in section 3.3 of this order; and

(3) decide on appeals by persons or entities who have filed requests for mandatory declassification review under section 3.5 of this order.

(c) Rules and procedures. The Panel shall issue bylaws, which shall be published in the **Federal Register**. The bylaws shall establish the rules and procedures that the Panel will follow in accepting, considering, and issuing decisions on appeals. The rules and procedures of the Panel shall provide that the Panel will consider appeals only on actions in which:

(1) the appellant has exhausted his or her administrative remedies within the responsible agency;

(2) there is no current action pending on the issue within the Federal courts; and

(3) the information has not been the subject of review by the Federal courts or the Panel within the past 2 years.

(d) Agency heads shall cooperate fully with the Panel so that it can fulfill its functions in a timely and fully informed manner. An agency head may appeal a decision of the Panel to the President through the Assistant to the President for National Security Affairs. The Panel shall report to the President through the Assistant to the President for National Security Affairs any instance in which it believes that an agency head is not cooperating fully with the Panel.

(e) The Panel is established for the sole purpose of advising and assisting the President in the discharge of his constitutional and discretionary authority to protect the national security of the United States. Panel decisions are committed to the discretion of the Panel, unless changed by the President.

(f) Notwithstanding paragraphs (a) through (e) of this section, whenever the Panel reaches a conclusion that information owned or controlled by the Director of Central Intelligence (Director) should be declassified, and the Director notifies the Panel that he objects to its conclusion because he has determined that the information could reasonably be expected to

cause damage to the national security and to reveal (1) the identity of a human intelligence source, or (2) information about the application of an intelligence source or method (including any information that concerns, or is provided as a result of, a relationship with a cooperating intelligence element of a foreign government), the information shall remain classified unless the Director's determination is appealed to the President, and the President reverses the determination.

Sec. 5.4. General Responsibilities. Heads of agencies that originate or handle classified information shall:

(a) demonstrate personal commitment and commit senior management to the successful implementation of the program established under this order;

(b) commit necessary resources to the effective implementation of the program established under this order;

(c) ensure that agency records systems are designed and maintained to optimize the safeguarding of classified information, and to facilitate its declassification under the terms of this order when it no longer meets the standards for continued classification; and

(d) designate a senior agency official to direct and administer the program, whose responsibilities shall include:

(1) overseeing the agency's program established under this order, provided, an agency head may designate a separate official to oversee special access programs authorized under this order. This official shall provide a full accounting of the agency's special access programs at least annually;

(2) promulgating implementing regulations, which shall be published in the **Federal Register** to the extent that they affect members of the public;

(3) establishing and maintaining security education and training programs;

(4) establishing and maintaining an ongoing self-inspection program, which shall include the periodic review and assessment of the agency's classified product;

(5) establishing procedures to prevent unnecessary access to classified information, including procedures that:

(A) require that a need for access to classified information is established before initiating administrative clearance procedures; and

(B) ensure that the number of persons granted access to classified information is limited to the minimum consistent with operational and security requirements and needs;

(6) developing special contingency plans for the safeguarding of classified information used in or near hostile or potentially hostile areas;

(7) ensuring that the performance contract or other system used to rate civilian or military personnel performance includes the management of classified information as a critical element or item to be evaluated in the rating of:

(A) original classification authorities;

(B) security managers or security specialists; and

(C) all other personnel whose duties significantly involve the creation or handling of classified information;

(8) accounting for the costs associated with the implementation of this order, which shall be reported to the Director of the Information Security Oversight Office for publication; and

(9) assigning in a prompt manner agency personnel to respond to any request, appeal, challenge, complaint, or suggestion arising out of this order that pertains to classified information that originated in a component of the agency that no longer exists and for which there is no clear successor in function.

Sec. 5.5. Sanctions. (a) If the Director of the Information Security Oversight Office finds that a violation of this order or its implementing directives

has occurred, the Director shall make a report to the head of the agency or to the senior agency official so that corrective steps, if appropriate, may be taken.

(b) Officers and employees of the United States Government, and its contractors, licensees, certificate holders, and grantees shall be subject to appropriate sanctions if they knowingly, willfully, or negligently:

(1) disclose to unauthorized persons information properly classified under this order or predecessor orders;

(2) classify or continue the classification of information in violation of this order or any implementing directive;

(3) create or continue a special access program contrary to the requirements of this order; or

(4) contravene any other provision of this order or its implementing directives.

(c) Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation.

(d) The agency head, senior agency official, or other supervisory official shall, at a minimum, promptly remove the classification authority of any individual who demonstrates reckless disregard or a pattern of error in applying the classification standards of this order.

(e) The agency head or senior agency official shall:

(1) take appropriate and prompt corrective action when a violation or infraction under paragraph (b) of this section occurs; and

(2) notify the Director of the Information Security Oversight Office when a violation under paragraph (b)(1), (2), or (3) of this section occurs.

PART 6—GENERAL PROVISIONS

Sec. 6.1. Definitions. For purposes of this order:

(a) “Access” means the ability or opportunity to gain knowledge of classified information.

(b) “Agency” means any “Executive agency,” as defined in 5 U.S.C. 105; any “Military department” as defined in 5 U.S.C. 102; and any other entity within the executive branch that comes into the possession of classified information.

(c) “Automated information system” means an assembly of computer hardware, software, or firmware configured to collect, create, communicate, compute, disseminate, process, store, or control data or information.

(d) “Automatic declassification” means the declassification of information based solely upon:

(1) the occurrence of a specific date or event as determined by the original classification authority; or

(2) the expiration of a maximum time frame for duration of classification established under this order.

(e) “Classification” means the act or process by which information is determined to be classified information.

(f) “Classification guidance” means any instruction or source that prescribes the classification of specific information.

(g) “Classification guide” means a documentary form of classification guidance issued by an original classification authority that identifies the elements of information regarding a specific subject that must be classified and establishes the level and duration of classification for each such element.

(h) “Classified national security information” or “classified information” means information that has been determined pursuant to this order or any

predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(i) "Confidential source" means any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation that the information or relationship, or both, are to be held in confidence.

(j) "Damage to the national security" means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, taking into consideration such aspects of the information as the sensitivity, value, utility, and provenance of that information.

(k) "Declassification" means the authorized change in the status of information from classified information to unclassified information.

(l) "Declassification authority" means:

- (1) the official who authorized the original classification, if that official is still serving in the same position;
- (2) the originator's current successor in function;
- (3) a supervisory official of either; or
- (4) officials delegated declassification authority in writing by the agency head or the senior agency official.

(m) "Declassification guide" means written instructions issued by a declassification authority that describes the elements of information regarding a specific subject that may be declassified and the elements that must remain classified.

(n) "Derivative classification" means the incorporating, paraphrasing, restating, or generating in new form information that is already classified, and marking the newly developed material consistent with the classification markings that apply to the source information. Derivative classification includes the classification of information based on classification guidance. The duplication or reproduction of existing classified information is not derivative classification.

(o) "Document" means any recorded information, regardless of the nature of the medium or the method or circumstances of recording.

(p) "Downgrading" means a determination by a declassification authority that information classified and safeguarded at a specified level shall be classified and safeguarded at a lower level.

(q) "File series" means file units or documents arranged according to a filing system or kept together because they relate to a particular subject or function, result from the same activity, document a specific kind of transaction, take a particular physical form, or have some other relationship arising out of their creation, receipt, or use, such as restrictions on access or use.

(r) "Foreign government information" means:

- (1) information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;
- (2) information produced by the United States Government pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or
- (3) information received and treated as "foreign government information" under the terms of a predecessor order.

(s) "Information" means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that

is owned by, produced by or for, or is under the control of the United States Government. "Control" means the authority of the agency that originates information, or its successor in function, to regulate access to the information.

(t) "Infraction" means any knowing, willful, or negligent action contrary to the requirements of this order or its implementing directives that does not constitute a "violation," as defined below.

(u) "Integral file block" means a distinct component of a file series, as defined in this section, that should be maintained as a separate unit in order to ensure the integrity of the records. An integral file block may consist of a set of records covering either a specific topic or a range of time such as presidential administration or a 5-year retirement schedule within a specific file series that is retired from active use as a group.

(v) "Integrity" means the state that exists when information is unchanged from its source and has not been accidentally or intentionally modified, altered, or destroyed.

(w) "Mandatory declassification review" means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.5 of this order.

(x) "Multiple sources" means two or more source documents, classification guides, or a combination of both.

(y) "National security" means the national defense or foreign relations of the United States.

(z) "Need-to-know" means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function.

(aa) "Network" means a system of two or more computers that can exchange data or information.

(bb) "Original classification" means an initial determination that information requires, in the interest of the national security, protection against unauthorized disclosure.

(cc) "Original classification authority" means an individual authorized in writing, either by the President, the Vice President in the performance of executive duties, or by agency heads or other officials designated by the President, to classify information in the first instance.

(dd) "Records" means the records of an agency and Presidential papers or Presidential records, as those terms are defined in title 44, United States Code, including those created or maintained by a government contractor, licensee, certificate holder, or grantee that are subject to the sponsoring agency's control under the terms of the contract, license, certificate, or grant.

(ee) "Records having permanent historical value" means Presidential papers or Presidential records and the records of an agency that the Archivist has determined should be maintained permanently in accordance with title 44, United States Code.

(ff) "Records management" means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations.

(gg) "Safeguarding" means measures and controls that are prescribed to protect classified information.

(hh) "Self-inspection" means the internal review and evaluation of individual agency activities and the agency as a whole with respect to the

implementation of the program established under this order and its implementing directives.

(ii) "Senior agency official" means the official designated by the agency head under section 5.4(d) of this order to direct and administer the agency's program under which information is classified, safeguarded, and declassified.

(jj) "Source document" means an existing document that contains classified information that is incorporated, paraphrased, restated, or generated in new form into a new document.

(kk) "Special access program" means a program established for a specific class of classified information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level.

(ll) "Systematic declassification review" means the review for declassification of classified information contained in records that have been determined by the Archivist to have permanent historical value in accordance with title 44, United States Code.

(mm) "Telecommunications" means the preparation, transmission, or communication of information by electronic means.

(nn) "Unauthorized disclosure" means a communication or physical transfer of classified information to an unauthorized recipient.

(oo) "Violation" means:

(1) any knowing, willful, or negligent action that could reasonably be expected to result in an unauthorized disclosure of classified information;

(2) any knowing, willful, or negligent action to classify or continue the classification of information contrary to the requirements of this order or its implementing directives; or

(3) any knowing, willful, or negligent action to create or continue a special access program contrary to the requirements of this order.

(pp) "Weapons of mass destruction" means chemical, biological, radiological, and nuclear weapons.

Sec. 6.2. General Provisions. (a) Nothing in this order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended, or the National Security Act of 1947, as amended. "Restricted Data" and "Formerly Restricted Data" shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and regulations issued under that Act.

(b) The Attorney General, upon request by the head of an agency or the Director of the Information Security Oversight Office, shall render an interpretation of this order with respect to any question arising in the course of its administration.

(c) Nothing in this order limits the protection afforded any information by other provisions of law, including the Constitution, Freedom of Information Act exemptions, the Privacy Act of 1974, and the National Security Act of 1947, as amended. This order is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its departments, agencies, officers, employees, or agents. The foregoing is in addition to the specific provisions set forth in sections 3.1(b) and 5.3(e) of this order."

(d) Executive Order 12356 of April 6, 1982, was revoked as of October 14, 1995.

Sec. 6.3. *Effective Date.* This order is effective immediately, except for section 1.6, which shall become effective 180 days from the date of this order.

A handwritten signature in black ink, appearing to read "George W. Bush". The signature is written in a cursive style with a large, sweeping "G" and "B".

THE WHITE HOUSE,
March 25, 2003.

[FR Doc. 03-7736

Filed 3-27-03; 9:17 am]

Billing code 3195-01-P

Reader Aids

Federal Register

Vol. 68, No. 60

Friday, March 28, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202-741-6000
Laws	741-6000
Presidential Documents	
Executive orders and proclamations	741-6000
The United States Government Manual	741-6000
Other Services	
Electronic and on-line services (voice)	741-6020
Privacy Act Compilation	741-6064
Public Laws Update Service (numbers, dates, etc.)	741-6043
TTY for the deaf-and-hard-of-hearing	741-6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: <http://www.access.gpo.gov/nara>

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: http://www.archives.gov/federal_register/

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <http://listserv.access.gpo.gov> and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings)*; then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, MARCH

9851-10140.....	3
10141-10344.....	4
10345-10650.....	5
10651-10952.....	6
10953-11310.....	7
11311-11462.....	10
11463-11732.....	11
11733-11966.....	12
11967-12282.....	13
12283-12568.....	14
12569-12796.....	17
12797-13218.....	18
13219-13614.....	19
13615-13802.....	20
13803-14126.....	21
14127-14306.....	24
14307-14526.....	25
14527-14886.....	26
14887-15042.....	27
15043-15334.....	28

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR	11079 (Amended by: 13286).....	10619
Proclamations:	11139 (Amended by: 13286).....	10619
7648.....	10641	
7649.....	10643	
7650.....	10645	
7651.....	10647	
7652.....	10649	
7653.....	13217	
7654.....	13805	
7655.....	14887	
Administrative Orders:		
Memorandums:	11438 (Amended by: 13286).....	10619
Memorandum of		
February 12, 2003	10141	
Memorandum of March		
11, 2003.....	12569	
Memorandum of March		
12, 2003.....	12281	
Presidential		
Determinations:	11645 (Amended by: 13286).....	10619
No. 2003-15 of		
February 13, 2003	10651	
No. 2003-16 of March		
14, 2003.....	13803	
No. 2003-17 of March		
20, 2003.....	15043	
Notices:		
Notice of March 12,		
2003	12563	
Executive Orders:		
4601 (Amended by: 13286).....	10619	
10977.....	12567	
10113 (Amended by: 13286).....	10619	
10163 (Amended by: 13286).....	10619	
10179 (Amended by: 13286).....	10619	
10271 (Amended by: 13286).....	10619	
10448 (Amended by: 13286).....	10619	
10499 (Amended by: 13286).....	10619	
10554 (Amended by: 13286).....	10619	
10631 (Amended by: 13286).....	10619	
10637 (Amended by: 13286).....	10619	
10694 (Amended by: 13286).....	10619	
10789 (Amended by: 13286).....	10619	
10977 (Amended by: 13286; See: 13289).....	10619, 12567	
11016 (Amended by: 13286).....	10619	
11046 (Amended by: 13286).....	10619	
	11079 (Amended by: 13286).....	10619
	11139 (Amended by: 13286).....	10619
	11190 (Amended by: 13286).....	10619
	11231 (Amended by: 13286).....	10619
	11239 (Amended by: 13286).....	10619
	11366 (Amended by: 13286).....	10619
	11438 (Amended by: 13286).....	10619
	11446 (Amended by: 13286).....	10619
	11448 (Amended by: 13286).....	10619
	11623 (Amended by: 13286).....	10619
	11645 (Amended by: 13286).....	10619
	11800 (Amended by: 13286).....	10619
	11858 (Amended by: 13286).....	10619
	11926 (Amended by: 13286).....	10619
	11965 (Amended by: 13286).....	10619
	12002 (Amended by: 13286).....	10619
	12146 (Amended by: 13286).....	10619
	12148 (Amended by: 13286).....	10619
	12160 (Amended by: 13286).....	10619
	12188 (Amended by: 13286).....	10619
	12208 (Amended by: 13286).....	10619
	12341 (Amended by: 13286).....	10619
	12356 (See: 13292).....	15315
	12382 (Amended by: 13286).....	10619
	12472 (Amended by: 13286).....	10619
	12501 (Amended by: 13286).....	10619
	12555 (Amended by: 13286).....	10619
	12580 (Amended by: 13286).....	10619
	12656 (Amended by: 13286).....	10619
	12657 (Amended by: 13286).....	10619
	12699 (Amended by: 13286).....	10619
	12727 (Amended by: 13286).....	10619

12728 (Amended by: 13286).....10619	13286).....10619	1205.....12310	225.....12316
12733 (Amended by: 13286).....10619	13254 (Amended by: 13286).....10619	1218.....11756	915.....13238
12742 (Amended by: 13286).....10619	13257 (Amended by: 13286).....10619	1219.....12881	13 CFR
12743 (Amended by: 13286).....10619	13260 (Amended by: 13286; Revoked by: 13286, eff. 3/31/03).....10619	1230.....11996	121.....13807, 15047
12752 (See Memorandum of March 11, 2003).....12569	13271 (Amended by: 13286).....10619	1405.....9944	14 CFR
12777 (Amended by: 13286).....10619	13274 (Amended by: 13286).....10619	1470.....13872	Ch. 1.....10145
12788 (Amended by: 13286).....10619	13276 (Amended by: 13286).....10619	1499.....9944	25.....9854, 10365, 12581
12789 (Amended by: 13286).....10619	13282 (Amended by: 13291).....14525	1599.....14546	39.....10147, 10149, 10152, 10154, 10156, 10583, 10653, 11467, 11469, 11967, 11971, 12285, 12797, 12799, 12802, 12806, 12809, 12812, 13221, 13618, 14309, 14310, 14311, 14312, 14530, 14533, 14889, 14892, 14894
12793 (Amended by: 13286).....10619	13284 (See: 13286).....10619	8 CFR	47.....10316
12807 (Amended by: 13286).....10619	13286.....10619	1.....10922	71.....10367, 10369, 10654, 11736, 11738, 12582, 12814, 13225, 13811, 14072, 14314, 14315
12824 (Amended by: 13286).....10619	13287.....10619	2.....10922	91.....12542, 14072
12830 (Amended by: 13286).....10619	13288.....11457	103.....10922	95.....14072
12835 (Amended by: 13286).....10619	13289.....12567	217.....10954	97.....10962, 10963, 13619, 13621
12870 (Amended by: 13286).....10619	13290.....14305	235.....10143	121.....12542, 14072
12906 (Amended by: 13286).....10619	13291.....14525	239.....10922	125.....14072
12919 (Amended by: 13286).....10619	13292.....15315	1001.....10349	129.....14072
12957 (See Notice of March 12, 2003).....12563	5 CFR	1003.....10349	135.....12542, 14072
12958 (Amended by: 13292).....15315	110.....10666	1101.....10349	145.....12542
12959 (See Notice of March 12, 2003).....12563	792.....14127	1103.....10349	1260.....14535
12977 (Amended by: 13286).....10619	Ch. XIV.....10953	1205.....10349	1274.....14535
12978 (Amended by: 13286).....10619	2416.....10953	1208.....10349	Proposed Rules:
12982 (Amended by: 13286).....10619	2424.....10953	1209.....10349	21.....11475, 11759
12985 (Amended by: 13286; See: 13289).....10619, 12567	2429.....10953	1212.....10349	39.....9947, 9950, 9951, 9954, 10185, 10188, 10413, 10416, 11014, 11015, 11342, 11476, 11479, 11760, 11762, 11764, 11999, 12318, 12614, 12615, 12618, 13239, 14350, 14351, 14353, 14355, 14558
12989 (Amended by: 13286).....10619	2471.....10953	1216.....10349	43.....11475, 11759
13011 (Amended by: 13286).....10619	2472.....10953	1235.....10349	71.....12621, 14359
13059 (See Notice of March 12, 2003).....12563	6 CFR	1236.....10349	93.....14276
13076 (Amended by: 13286).....10619	9.....10912	1238.....10349	121.....12882
13100 (Amended by: 13286).....10619	15.....10886	1239.....10349	145.....11475, 11759
13112 (Amended by: 13286).....10619	17.....10892	1240.....10349	255.....12622, 12883
13120 (Amended by: 13286).....10619	21.....10904	1241.....10349	399.....12622, 12883
13130 (See: 13286).....10619	7 CFR	1244.....10349	15 CFR
13133 (Amended by: 13286).....10619	Ch. XVIII.....14889	1245.....10349	740.....10586
13154 (Amended by: 13286).....10619	Ch. XXXV.....14889	1246.....10349	743.....10586
13165 (Amended by: 13286).....10619	301.....11311	1249.....10349	772.....10586
13212 (Amended by: 13286).....10619	318.....11967	1270.....10349	774.....10586
13223 (Amended by: 13286).....10619	319.....9851	1274a.....10349	902.....12814
13228 (Amended by: 13286).....10619	652.....14131	1292.....10349	16 CFR
13231 (Amended by: 13286).....10619	911.....10345	1337.....10349	304.....9856
	944.....10345	9 CFR	17 CFR
	959.....11463	1.....12283	4.....12583
	982.....11733	50.....10361	200.....12780
	984.....10347	92.....10667	240.....12780, 14315
	989.....13219, 13615	97.....13861	Proposed Rules:
	1000.....13617	130.....13861	1.....12319
	1001.....13617	Proposed Rules:	4.....12001, 12622
	1005.....13617	94.....11998	18 CFR
	1006.....13617	317.....11008	284.....13813
	1007.....13617	327.....11008	375.....9857
	1030.....13617	10 CFR	388.....9857
	1032.....13617	20.....14307	Proposed Rules:
	1033.....13617	40.....10362	4.....13988
	1124.....13617	50.....12571	5.....13988
	1126.....13617	70.....14528	
	1131.....13617	71.....14528	
	1135.....13617	73.....14528	
	1940.....14527	150.....10362	
	Proposed Rules:	430.....10957	
	301.....13859	Proposed Rules	
	340.....11337	20.....14349	
	354.....13861	40.....10411	
	770.....12309	150.....10411	
	930.....9944, 13636	430.....11009	
	932.....11340	490.....10320	
	985.....11751	11 CFR	
		111.....12572	
		12 CFR	
		202.....13144, 14476	
		615.....15045	
		Proposed Rules:	
		203.....11010	

16.....13988	3285.....11448	117.....9890, 13226, 13227, 13228, 14149, 14536, 15051	439.....12266
385.....13988	3286.....11452	165.....12304, 13228, 13231, 13233, 14150, 14326, 14328, 14899, 15051, 15053	721.....15061
19 CFR	26 CFR	401.....11974	Proposed Rules:
4.....13623, 13819, 14476	1.....10161, 10655, 11313, 12287, 12815, 12817, 13226	Proposed Rules:	Ch. I.....10675, 12013
10.....13820, 13827, 14478	20.....10161	117.....13242, 13641, 14170, 14364	51.....12014
12.....13835	25.....10161	165.....13244, 13643, 13647, 13649, 14170, 14933, 14935	52.....11022, 11023, 12014, 12886, 12887, 13247, 13653, 13872, 14173, 14174, 14379, 14382, 14570, 15138
113.....13623, 14476	31.....10161	334.....14364	62.....10680, 10681, 11483, 11484, 12015
163.....14478	53.....10161	402.....12644	63.....12645
178.....13623, 14476	54.....10161	34 CFR	70.....11023
Proposed Rules:	56.....10161	Proposed Rules:	81.....13653, 14382
10.....14478	301.....10161, 11739, 14316	200.....13796	125.....13522
12.....13636	602.....10161, 11739, 12287, 12817	36 CFR	136.....11770, 11791
24.....13636	Proposed Rules:	704.....11974	194.....12887
113.....13638	1.....10190, 12324, 13242, 15118	Proposed Rules:	228.....11488
181.....12011	31.....15119	219.....10421, 12155	271.....12015
20 CFR	27 CFR	37 CFR	372.....13872
1.....14316	4.....10076	1.....14332	439.....12776
30.....14316	5.....10076	2.....14332	41 CFR
625.....10932	7.....10076	3.....14332	102-173.....15089
Proposed Rules:	555.....13768	4.....14332	300-2.....12602
404.....12639	Proposed Rules:	5.....14332	Ch. 304.....12602
416.....12639	7.....14291, 15119	102.....14332	42 CFR
422.....14563	25.....14191, 15119	104.....14332	50.....12306
21 CFR	28 CFR	150.....14332	412.....10987
165.....9873	0.....14899	Proposed Rules:	416.....15268
201.....12584	16.....14139, 14140	1.....14365	Proposed Rules:
510.....13225	540.....10656	2.....15119	Ch. IV.....15139
520.....13626	Proposed Rules:	7.....15119	83.....11924, 14388
530.....14134	28.....11481	201.....13652	412.....10421, 11234
558.....13839	29 CFR	38 CFR	43 CFR
610.....10157	1404.....10659	17.....11977, 13590	Proposed Rules:
888.....14134	1910.....12301	20.....13235	4.....13657
1308.....14114, 14119	1979.....14100	61.....13590	44 CFR
1310.....11471	4022.....12303	Proposed Rules:	61.....9895
Proposed Rules:	4044.....12303	3.....14567	64.....9897
1.....10668	30 CFR	39 CFR	152.....12544
111.....10418, 12158, 14360, 15117	18.....10965	111.....15055	206.....9899
112.....12158	250.....14274	3001.....12588	45 CFR
165.....9955	916.....14322	40 CFR	32.....15092
201.....12500	948.....10178	9.....13608	162.....11445
310.....12406	Proposed Rules:	52.....9892, 10966, 10969, 11316, 11977, 12590, 12825, 12827, 12829, 12831, 13630, 13840, 13843, 14151, 14154, 14156, 14159, 14161, 14537, 14540, 14542, 15059	1204.....14901
312.....12406	70.....10784, 12641	62.....10659, 10661, 10663, 11472, 11978	1206.....14901
314.....12406	72.....10940, 12641	63.....11745, 12590	1213.....14901
320.....12406	75.....10784, 11770, 12641	70.....10969, 14163	1229.....14901
600.....12406	90.....10784, 12641	82.....10370	1234.....14901
601.....12406	203.....14752	122.....11325, 13608	47 CFR
606.....12406, 12500	206.....12643	123.....13608	0.....11747, 13849
610.....12500	920.....14360	124.....13608	1.....12744, 15096
878.....13639	950.....10193	125.....14164	2.....10179, 11986, 12744
22 CFR	31 CFR	130.....13608	25.....11986
41.....13627	1.....12584	141.....14502	68.....13849
42.....13627, 13628	103.....10965	180.....10370, 10377, 10972, 10983, 11330, 13845, 14165	73.....10388, 10664, 10665, 11335, 11993, 12610, 12744, 14166, 15096, 15099, 15100
Proposed Rules:	515.....14141	228.....12592	74.....12744
211.....9944	560.....11741	271.....11981	76.....13236, 13850, 14340, 15096
23 CFR	575.....11741	300.....13633	78.....12744
655.....14138	Proposed Rules:	312.....14339	90.....10179
24 CFR	103.....12155	32 CFR	95.....9900
25.....12766	33 CFR	52.....9882	101.....12744
28.....12766	52.....9882	100.....13628, 15050	Proposed Rules:
30.....12766	100.....13628, 15050	110.....13629	15.....12015
81.....12766	110.....13629		54.....10430, 12020
92.....10160			
180.....12766			
207.....12792			
906.....11714			
3282.....12766			
3500.....12766			
Proposed Rules:			
203.....11730			

64.....14939	538.....13212	240.....10108	660.....11182, 13857
73 .....10681, 10682, 10683, 11345, 12023, 12024, 15140, 15141, 15142, 15143	552.....13212	572.....13856	679 .....9902, 9907, 9924, 9942, 11004, 11994, 13635, 13857, 13858, 14168, 14902, 15115
74.....12652	49 CFR	1540.....9902	697 .....14902
48 CFR	1.....10988, 12833	Proposed Rules:	Proposed Rules:
Ch. 1.....13200, 13208	107.....11748	192.....9966, 13249	17 .....12326, 12336, 13662, 13663, 14868
12.....13201, 13202	171.....14341	397.....13250	21.....12653
16.....13201	172.....14510	544.....13887	223.....13662
29.....13204	175.....14341	50 CFR	229.....10195
32.....13202, 13206	190.....11748	Ch. IV.....15100	600 .....9967, 11501, 11793, 14570
47.....13202	191.....11748	17 .....10388, 12611, 12834, 12863, 12982, 13370, 13498	622.....11794
52 .....13202, 13204, 13206	192.....11748	226.....13370	648 .....9968, 11023, 11346, 14388, 14571
1817.....13634	193.....11748	300.....10989, 14167	660.....12888, 13891
1825.....11747	195.....11748	622.....10180, 11003	679.....15144
Proposed Rules:	198.....11748	635.....14167	
501.....13212	199.....11748	648 .....9905, 10181, 12612, 12814, 14347, 14545	
	219.....10108		
	225.....10108		

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 28, 2003**ENVIRONMENTAL PROTECTION AGENCY**

Air programs:

- Stratospheric ozone protection—
- Ozone-depleting substances; substitutes list; published 1-27-03

Air quality implementation plans; approval and promulgation; various States:

- California; published 2-26-03
- Florida; published 1-27-03

FEDERAL COMMUNICATIONS COMMISSION

Practice and procedure:

- Truthful statements; published 3-28-03

GENERAL SERVICES ADMINISTRATION

Federal Management Regulation:

- Internet GOV Domain; published 3-28-03

SECURITIES AND EXCHANGE COMMISSION

Investment companies:

- Investment company assets with a securities depository; custody; published 2-20-03

Securities:

- Sarbanes-Oxley Act of 2002; implementation—
- Non-generally accepted accounting principles (GAAP) financial measures; conditions for use; published 1-30-03

COMMENTS DUE NEXT WEEK**AGENCY FOR INTERNATIONAL DEVELOPMENT**

Ocean freight claims administrative appeal process; comments due by 4-2-03; published 3-3-03 [FR 03-04574]

AGRICULTURE DEPARTMENT Agricultural Marketing Service

Raisins produced from grapes grown in—

California; comments due by 3-31-03; published 1-28-03 [FR 03-01965]

AGRICULTURE DEPARTMENT**Agricultural Marketing Service**

Rasins produced from grapes grown in California; comments due by 4-3-03; published 3-19-03 [FR 03-06663]

AGRICULTURE DEPARTMENT**Agricultural Marketing Service**

Spearmint oil produced in Far West; comments due by 4-1-03; published 3-12-03 [FR 03-05842]

AGRICULTURE DEPARTMENT**Commodity Credit Corporation**

Ocean freight claims administrative appeal process; comments due by 4-2-03; published 3-3-03 [FR 03-04574]

AGRICULTURE DEPARTMENT**Food and Nutrition Service**

Child nutrition programs:

- Women, infants, and children; special supplemental nutrition programs —

Federal financial and participating reporting requirements and information confidentiality; comments due by 4-1-03; published 12-2-02 [FR 02-30223]

AGRICULTURE DEPARTMENT**Forest Service**

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

- Age at which person can receive permits, and Regional Councils membership requirement change; comments due by 4-4-03; published 2-18-03 [FR 03-03742]

AGRICULTURE DEPARTMENT**Grain Inspection, Packers and Stockyards Administration**

Fees:

- Official inspection and weighing services; comments due by 3-31-03; published 2-28-03 [FR 03-04688]

Rice inspection services; comments due by 3-31-

03; published 2-28-03 [FR 03-04689]

AGRICULTURE DEPARTMENT**Natural Resources Conservation Service**

Loan and purchase programs:

- Conservation Security Program; comments due by 4-3-03; published 3-21-03 [FR 03-06825]

COMMERCE DEPARTMENT**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

- Northeastern United States fisheries—
- Spiny dogfish; comments due by 4-4-03; published 2-18-03 [FR 03-03845]

Marine mammals:

- Commercial fishing authorizations—
- Atlantic Large Whale Take Reduction Plan; comments due by 4-3-03; published 3-4-03 [FR 03-04897]

Taking and importing—

- Eastern North Pacific Southern Resident killer whales; comments due by 3-31-03; published 1-30-03 [FR 03-02031]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

- Commercially available off-the-shelf items; comments due by 3-31-03; published 1-30-03 [FR 03-01961]

Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02159]

Depreciation cost principle; comments due by 3-31-03; published 1-30-03 [FR 03-01962]

Insurance and pension costs; comments due by 3-31-03; published 1-30-03 [FR 03-01963]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

- Virgin Islands; comments due by 3-31-03; published 2-27-03 [FR 03-04517]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Virgin Islands; comments due by 3-31-03; published 2-27-03 [FR 03-04518]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

- California; comments due by 3-31-03; published 2-27-03 [FR 03-04512]
- Maryland; comments due by 3-31-03; published 2-27-03 [FR 03-04515]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

- West Virginia; comments due by 3-31-03; published 2-28-03 [FR 03-04629]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

- West Virginia; comments due by 3-31-03; published 2-28-03 [FR 03-04630]

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

- 4-(Dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane; comments due by 3-31-03; published 1-29-03 [FR 03-01768]

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

- Nebraska and Iowa; comments due by 3-31-03; published 2-25-03 [FR 03-04363]

South Carolina; comments due by 3-31-03; published 2-25-03 [FR 03-04364]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

- Commercially available off-the-shelf items; comments due by 3-31-03; published 1-30-03 [FR 03-01961]

Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02159]

Depreciation cost principle; comments due by 3-31-03; published 1-30-03 [FR 03-01962]

Insurance and pension costs; comments due by 3-31-03; published 1-30-03 [FR 03-01963]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare and Medicaid:

Acute care hospital inpatient prospective payment system; payment methodology for extraordinarily high-cost cases; comments due by 4-4-03; published 3-5-03 [FR 03-05121]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Public Health Security and Bioterrorism Preparedness and Response Act of 2002; implementation:

Food facilities registration; comments due by 4-4-03; published 2-3-03 [FR 03-02443]

Food importation notice to FDA; comments due by 4-4-03; published 2-3-03 [FR 03-02444]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:

Texas; comments due by 3-31-03; published 1-28-03 [FR 03-01873]

Drawbridge operations:

Florida; comments due by 3-31-03; published 8-28-02 [FR 02-21920]

Ports and waterways safety:

Portland Captain of Port Zone, ME; passenger vessels; security zones; comments due by 3-31-03; published 2-27-03 [FR 03-04635]

HOMELAND SECURITY DEPARTMENT

Immigration and Naturalization Service

Immigration:

Canada and Bermuda; visa and passport waiver removal for certain permanent residents; comments due by 4-1-03; published 1-31-03 [FR 03-02164]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Age at which person can receive permits, and

Regional Councils membership requirement change; comments due by 4-4-03; published 2-18-03 [FR 03-03742]

Endangered and threatened species permit applications; comments due by 4-3-03; published 3-4-03 [FR 03-04987]

INTERIOR DEPARTMENT

National Park Service

Vehicles and traffic safety:

Motor vehicle operation under influence of alcohol or drugs; comments due by 4-1-03; published 1-31-03 [FR 03-02321]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Wyoming; comments due by 4-3-03; published 3-4-03 [FR 03-04970]

JUSTICE DEPARTMENT

Drug Enforcement Administration

Records, reports, and exports of listed chemicals:

Chemical mixtures containing phosphorus; comments due by 4-1-03; published 1-31-03 [FR 03-02296]

LABOR DEPARTMENT

Occupational Safety and Health Administration

Construction safety and health standards:

Crane and Derrick Negotiated Rulemaking Advisory Committee; intent to establish; comments due by 3-31-03; published 2-27-03 [FR 03-04560]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Commercially available off-the-shelf items; comments due by 3-31-03; published 1-30-03 [FR 03-01961]

Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02159]

Depreciation cost principle; comments due by 3-31-03; published 1-30-03 [FR 03-01962]

Insurance and pension costs; comments due by 3-31-03; published 1-30-03 [FR 03-01963]

NUCLEAR REGULATORY COMMISSION

Source material; domestic licensing:

Source material holdings; reporting requirements under international agreements; comments due by 4-4-03; published 3-5-03 [FR 03-05168]

NUCLEAR REGULATORY COMMISSION

Source material; domestic licensing:

Source material holdings; reporting requirements under international agreements; comments due by 4-4-03; published 3-5-03 [FR 03-05169]

SMALL BUSINESS ADMINISTRATION

Government contracting programs:

Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02158]

Small business size standards:

Facilities support services (including base maintenance); comments due by 4-4-03; published 2-3-03 [FR 03-02455]

SOCIAL SECURITY ADMINISTRATION

Social security benefits and supplemental security income:

Federal old age, survivors, and disability insurance, and aged, blind, and disabled—
Administrative law judges; video teleconference hearings; comments due by 4-4-03; published 2-3-03 [FR 03-02402]

STATE DEPARTMENT

Visas; nonimmigrant documentation:

Canada and Bermuda; visa and passport waiver removal for certain permanent residents; comments due by 4-1-03; published 1-31-03 [FR 03-02202]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Advisory circulars; availability, etc.:

Corrosion Prevention and Control Programs; development and implementation; comments due by 4-1-03; published 10-3-02 [FR 02-24933]

Air carrier certification and operations:

Corrosion Prevention and Control Programs; comments due by 4-1-03; published 10-3-02 [FR 02-24932]

Airworthiness directives:

BAE Systems (Operations) Ltd.; comments due by 3-31-03; published 2-27-03 [FR 03-04588]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 3-31-03; published 1-28-03 [FR 03-01816]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 3-31-03; published 1-29-03 [FR 03-01815]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 3-31-03; published 1-29-03 [FR 03-01827]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Bombardier; comments due by 3-31-03; published 2-28-03 [FR 03-04739]

Dassault; comments due by 4-2-03; published 3-3-03 [FR 03-04839]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 3-31-03; published 2-28-03 [FR 03-04738]

Honeywell; comments due by 3-31-03; published 1-30-03 [FR 03-02094]

Airworthiness standards:

Special conditions—
Learjet Model 24, 24A, 24B, 24B-A, 24C, 24D, 24D-A, 24E, 24F, 24F-A, 25, 25A, 25B, 25C, 25D, and 25F airplanes; comments due by 4-2-03; published 3-3-03 [FR 03-04796]

Learjet Model 24/25 Series airplanes; comments due by 4-4-03; published 3-5-03 [FR 03-05129]

TRANSPORTATION DEPARTMENT**Research and Special Programs Administration**

Pipeline safety:

- Hazardous liquid transportation—
- Gas transmission pipelines; integrity management in high consequence areas; comments due by 3-31-03; published 1-28-03 [FR 03-00603]

TREASURY DEPARTMENT**Foreign Assets Control Office**

- Reporting and procedures regulations:
 - Economic Sanctions Enforcement Guidelines; comment request; comments due by 3-31-03; published 1-29-03 [FR 03-01809]

TREASURY DEPARTMENT**Internal Revenue Service**

Income taxes:

Accuracy-related penalty; imposition defenses establishment; comments due by 3-31-03; published 12-31-02 [FR 02-32927]

TREASURY DEPARTMENT

Terrorism Risk Insurance Program; comments due by 3-31-03; published 2-28-03 [FR 03-04831]

TREASURY DEPARTMENT

Terrorism Risk Insurance Program; comments due by 3-31-03; published 2-28-03 [FR 03-04832]

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

- Herbicide exposure, disability or death caused by; effective dates of benefits; disposition of unpaid benefits after death of beneficiary; comments due by 3-31-03; published 1-28-03 [FR 03-01834]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.nara.gov/fedreg/plawcurr.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/nara005.html>. Some laws may not yet be available.

H.R. 395/P.L. 108-10

Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

Last List March 10, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html>

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.